

# **Elizabethtown College Sexual Misconduct Policies and Procedures**

## ***Appendix R of the 2023-2024 Student Code of Conduct***

**IF YOU BELIEVE YOU OR ANYONE ELSE IS IMMEDIATE DANGER,**

**CALL 911 or Campus Safety at 717-361-1111**

The resources below are confidential services available to any Elizabethtown College community member who is a victim of sexual assault, domestic violence, dating violence or stalking. They can be accessed without reporting an incident to anyone at Elizabethtown College.

- **Sexual Assault Forensic Examination (SAFE) - Lancaster General Hospital – Emergency Room – 555**  
N. Duke Street, Lancaster, PA 17602, 717.544.5122
- **YWCA Lancaster Sexual Assault Prevention & Counseling Center 24/7 Hotline – 717.392.7273**
- **Sexual Assault Forensic Examination (SAFE) - Penn State Hershey Medical Center – Emergency Room – 500** University Dr., Hershey, PA 17033, 717.531.8333
- **Sexual Assault Forensic Examination (SAFE) - UPMC Pinnacle Harrisburg Campus - 111** South Front Street, Harrisburg PA 17101 Phone: 717.782.3131
- **Penn Medicine Lancaster General Health - LG Health Physicians Family Medicine Sycamore Square**  
99 Masonic Drive, Suite 101, Elizabethtown, PA 17022. Phone: 717-689-4243 (Etown College students call 717-588-1059 to be connected during business hours)
- **Domestic Violence Services 24-Hour Hotline – Community Action Program of Lancaster County –**  
717.299.1249 (collect calls accepted)

## Title IX

Title IX of the Education Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972<sup>[1]</sup> that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence) that are reflected in the definitions of Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking included as Regulatory Prohibited Conduct under this Policy
- Addresses how the Institution must respond to reports of misconduct falling within the definitions of Regulatory Prohibited Conduct under this Policy, and
- Mandates a grievance (or resolution) process the Institution must follow before issuing disciplinary sanctions against a person accused of Regulatory Prohibited Conduct under this Policy.

In addition to federal legislative requirements, Act 16 of 2019<sup>[2]</sup> of the General Assembly of Pennsylvania requires all postsecondary institutions in the Commonwealth of Pennsylvania to adopt a clear, understandable written policy on sexual harassment and sexual violence that informs victims of their rights under federal and state law, including the crime victims bill of rights.

## Prohibited Behaviors

Elizabethtown College (henceforth "The College") prohibits all Sexual Misconduct Violations as defined in this Policy. This prohibited conduct can affect all genders, gender identities and sexual orientations. Some of these prohibited forms of conduct may also be crimes under Pennsylvania or federal law. The College will promptly and equitably respond to all reports of sexual misconduct to eliminate the misconduct, prevent its recurrence, and redress its effects on any individual or the community.

## Scope of the Policy and Jurisdiction

Elizabethtown College Sexual Misconduct Policy and Procedures applies to all employees (faculty, staff, all other non-student employees), and all students. Elizabethtown College may take action outside of the procedures outlined in this Policy against third Parties who engage in conduct prohibited by this Policy in connection with Elizabethtown College's Education Program or Activity. This policy applies to all on-campus and off-campus conduct that is likely to have a substantial adverse effect on any member of the College community. Methods of resolution of violations of this Policy vary. All allegations of Regulatory Prohibited Conduct will be addressed according to this Policy and Procedures. **Allegations of Non-Regulatory Prohibited Conduct defined in this policy, or discrimination based upon other protected classes, will be addressed under other Elizabethtown College policies and procedures, including other applicable discrimination policies and procedures, such as the Student Code of Conduct, Faculty Handbook, and Employee Handbook. Notwithstanding any other provision of this Sexual Misconduct Policy and Procedures, the rights and procedures set forth herein shall not apply to allegations of Non-Regulatory Prohibited Conduct that are addressed under other policies and procedures.**

There is no time limit for reporting allegations of sexual misconduct, however, the College strongly encourages the prompt reporting of sexual misconduct to allow the Institution to respond promptly and effectively. If the reported Respondent is not a member of the College community or is no longer associated with the College at the time of the report or at the time a resolution process is initiated, the College may be unable to investigate or take disciplinary action and may be required to dismiss the Formal Complaint for a lack of jurisdiction. The Title IX Coordinator will determine whether to apply this Policy and Procedures or refer for resolution through another policy. See "Dismissals" section.

**The College's Education Program or Activity** is defined as:

*locations, events, or circumstances over which Elizabethtown College exercises substantial control over the Respondent and the context in which the conduct allegedly constituting Title IX Sexual Harassment occurred. Education program or Activity includes any building owned or controlled by Elizabethtown College, and/or by a student organization that is officially recognized by Elizabethtown College.*

This Policy applies when any Employee of the College is alleged to have engaged in Regulatory Prohibited Conduct as defined by this Policy. To the extent this Policy is inconsistent with any provisions of any faculty or Employee handbook, policy, or procedure, because this Policy on Title IX Sexual Harassment is mandated by federal law, this Policy shall prevail.

## Title IX, VAWA and Nondiscrimination

Elizabethtown College prohibits any form of discrimination or harassment on the basis of sex, race, color, age, religion, national or ethnic origin, sexual orientation, gender identity or expression, pregnancy, marital or family status, medical condition, genetic information, veteran status, or disability in any decision regarding admissions, employment, or participation in a College program or activity in accordance with the letter and spirit of federal, state, and local non-

discrimination and equal opportunity laws, such as Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination in Employment Act, the Americans with Disabilities Act and ADA Amendments Act, the Equal Pay Act, and the Pennsylvania Human Relations Act.

The College also complies with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act, as amended by the Violence Against Women Act (VAWA). Title IX prohibits retaliation for asserting or otherwise participating in claims of sex discrimination. VAWA imposes additional duties on universities and colleges to investigate and respond to reports of sexual assault, stalking, and dating or domestic violence, and to publish policies and procedures related to the way these reports are handled. The College has designated the Title IX Coordinator, with assistance of Deputy Title IX Coordinator(s), to coordinate the College's compliance with Title IX and VAWA and to respond to reports of violations. The College has designated the following person to coordinate the College's compliance with the VAWA-related Clery reporting requirements.

**Title IX Coordinator:**

**Gabrielle Reed-Title IX Coordinator**

**Office Address:** BSC 210 (Baughner Student Center)

**Email:** reedg@etown.edu

**Telephone Number:** 717-361-3727 or at any hour by contacting Campus Safety, 717-361-1111

**Title IX Web page:** <https://www.etown.edu/offices/diversity/titleix/index.aspx>

## Standard of Evidence

Elizabethtown College uses the Preponderance of the Evidence standard in resolving all matters alleging Title IX Sexual Harassment. Consistent with requirements set forth in the Pennsylvania Code pertaining to student disciplinary due process requirements, the College will use the preponderance of the evidence standard in investigations of formal complaints alleging sexual misconduct violations under this Policy. This means that the individual(s) charged with making a finding must determine whether it is more likely than not that a violation of the Policy occurred. Federal law requires the College to use the same Standard of Evidence in all matters alleging Title IX Sexual Harassment, which, therefore, fall within this Policy. The College has no discretion to do otherwise.

## Burden of Proof

The burden of proof refers to who has the responsibility of showing a violation has occurred. It is always the responsibility of the Institution to satisfy the burden of proof. The Respondent does not have the burden to prove that a violation did not occur. Respondents may decide not to share their side of the story or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the Institution and does not indicate responsibility. Additionally, Decision-Maker(s) shall not make an adverse inference against a Respondent for the Respondent's refusal to participate in an investigation or hearing, nor will Respondent's refusal to participate result in increased sanctions if the Respondent is found responsible for the violation(s).

# Definition of Title IX Sexual Harassment (Regulatory Prohibited Conduct)

Title IX Sexual Harassment is defined as conduct:

1. On the basis of sex,
2. That occurs within Elizabethtown College's Education Program or Activity,
3. Within the United States, and
4. Involves
  - (a) a College Employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct; or
  - (b) unwelcome conduct that is determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the College's Education Program or Activity; or
  - (c) **Sexual Assault**; or
  - (d) **Dating Violence**; or
  - (e) **Domestic Violence**; or
  - (f) **Stalking**.

*The definitions for Sexual Assault, Dating Violence, Domestic Violence, and Stalking can be found in the Glossary at the end of this document.*

**Dating Violence** – (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act) includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.

Dating Violence is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Dating Violence will be categorized as Non-Regulatory.

**Domestic Violence** – (as defined in the VAWA amendments to the Clery Act), includes any violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under Pennsylvania's domestic or family violence laws or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Pennsylvania.

Domestic Violence is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Domestic Violence will be categorized as Non-Regulatory.

**Retaliation** – Any action, directly or through others, which is aimed to deter a reasonable person from reporting sexual misconduct or participating in an investigation or hearing or action that is done in response to such activities. This includes but is not limited to intimidation, threats, coercion, or discrimination against any individual (A) for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations; or (B) because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Policy. A finding of retaliation under this Policy is not dependent on a finding that the underlying sexual misconduct occurred.

**Sexual Assault:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders. This includes the following:

- **Rape:** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent. Sexual Assault is categorized as **Regulatory** when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Sexual Assault will be categorized as **Non-Regulatory**.

**Sexual Exploitation** – Engaging in sexual behaviors directed toward or involving another person or use of another person's sexuality for purposes of sexual gratification, financial gain, personal gain or personal advantage when Consent is not present. This includes, but is not limited to, the following actions, including when they are done via electronic means, methods or devices:

- A. Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's Consent;
- B. Indecent exposure or inducing others to expose private or intimate parts of the body when Consent is not present;
- C. Recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person's Consent;
- D. Prostituting another individual; or
- E. Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and

F. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

**Regulatory Prohibited Conduct** – For purposes of this Policy, the term includes the defined violations of Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking.

**Regulatory Quid Pro Quo Sexual Harassment** - An Employee conditioning the provision of aid, benefit or service of the College on an individual's participation in unwelcome sexual conduct.

**Non-Regulatory Quid Pro Quo Sexual Harassment** - An Official, Volunteer or Student conditioning the provision of aid, benefit or service of the College on the individual's participation in unwelcome sexual conduct.

**Regulatory Hostile Environment Sexual Harassment** - Unwelcome conduct, on the basis of sex, that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's Education Program or Activity.

**Non-Regulatory Hostile Environment Sexual Harassment** - Unwelcome conduct, on the basis of sex, that a reasonable person would determine is sufficiently severe, pervasive, and objectively offensive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from any educational, employment, social or residential program offered in connection with the College.

**Stalking** – (as defined in the VAWA amendments to the Clery Act) means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- a. fear for their safety or the safety of others; or
- b. suffer substantial emotional distress.

A course of conduct is when a person engages in two or more acts that include, but are not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person in a prohibited way, or interferes with a person's property.

Stalking includes the concept of cyberstalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, email or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Stalking is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Stalking will be categorized as Non-Regulatory.

**Consent** - Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act.
- Consent may be initially given but withdrawn at any time.
- Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide Consent due to intellectual or other disability or other condition. When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs impact each individual differently. Determining whether an individual is incapacitated requires an individualized determination. When determining whether a person has the capacity to provide Consent, the College will consider whether a sober, reasonable person in the same position knew or should have known that the other party could or could not consent to the sexual activity. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When Consent is withdrawn or can no longer be given, Consent is not present and sexual activity must stop.

### **Other Defined Terms**

This Policy uses many defined terms, indicated by the capitalization of the first letter(s) in the term. All defined terms are included in a Glossary at the end of the Policy. The definitions in the Glossary are important to a complete understanding of this Policy.

## **Confidential Resources**

The resources below are confidential services available to any Elizabethtown College community member who is a victim of sexual assault, domestic violence, dating violence or stalking. They can be accessed without officially reporting an incident to the College. (see "Statement on Privacy and Confidentiality" below)

*For reporting an incident to a campus official, please see the section below entitled "How to Report an Incident" as different College employees have various levels of confidentiality and reporting requirements.*

- **Sexual Assault Forensic Examination (SAFE) - Lancaster General Hospital – Emergency Room – 555 N. Duke Street, Lancaster, PA 17602, 717.544.5122**
- **YWCA Lancaster Sexual Assault Prevention & Counseling Center 24/7 Hotline – 717.392.7273**
- **Sexual Assault Forensic Examination (SAFE) - Penn State Hershey Medical Center – Emergency Room – 500 University Dr., Hershey, PA 17033, 717.531.8333**
- **Sexual Assault Forensic Examination (SAFE) - UPMC Pinnacle Harrisburg Campus - 111 South Front Street, Harrisburg PA 17101 Phone: 717.782.3131**
- **Penn Medicine Lancaster General Health - LG Health Physicians Family Medicine Sycamore Square 99 Masonic Drive, Suite 101, Elizabethtown, PA 17022. Phone: 717-689-4243 (Etown College students call 717-588-1059 to be connected during business hours)**
- **Domestic Violence Services 24-Hour Hotline – Community Action Program of Lancaster County – 717.299.1249 (collect calls accepted)**

If a student is seeking completely confidential assistance on-campus, the best option is to consult first with a College Counselor or Chaplain. The Counselor or Chaplain can provide confidential advice, share resources, and inform the



student about the process for making an official report to the College without any requirement to disclose personally identifiable information to the Title IX Coordinator.

- **College Counselor** is available 24/7 -Call 717.361.1405 to request a confidential counseling appointment or call Campus Safety after hours at 717.361.1111 to request confidential support.
- **College Chaplain and Assistant Chaplain (clergy)** are available during regular college business hours for confidential consultation. Call 717.361.1260.

In cases of sexual assault, dating violence, domestic violence or stalking, complainants are encouraged to preserve physical evidence that may assist in proving the alleged criminal offense occurred or that may be helpful in obtaining a protection order. The decision to make a formal complaint or criminal report does not have to be made at this time. However, following these procedures will help preserve this option for the future.

To properly preserve evidence, ensure the incident area is not disturbed. The individual should not bathe, urinate, douche, brush teeth, or drink liquids. Clothes should not be changed. If clothes have been removed, place original clothing in a paper bag. (Plastic bags may damage evidence.) For crimes of stalking, the individual should preserve all instances of unwanted communications (texts, e-mails, social media posts) and keep a log of unwanted phone calls. For crimes of dating violence or domestic violence, pictures of injuries should be taken.

*If you have been assaulted, you are encouraged to seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after a medical examination. It is recommended that a physical exam be conducted within 72 hours of the assault. Participating in a sexual assault forensic exam does not require the individual to press charges. This action keeps the option open. (Individuals under the age of eighteen should be aware that, as a minor (child), their parent(s) or legal guardian may have the right to obtain information from their medical records.) Lancaster General Hospital and Penn State Hershey Medical Center provide a Sexual Assault Forensic Exam (SAFE). The hospital staff can assist with treatment for sexually transmitted diseases and other health services.*

Contact either of the following for immediate law enforcement assistance for any crime of sexual assault, dating violence, domestic violence, or stalking:

- **Elizabethtown Police Department - Dial 911**
- **Campus Safety – 717.361.1111 (24/7 Emergency Hotline)**

Campus Safety can arrange transportation to a local hospital or local police department if requested. **You have the right to report, and the right to not report, to law enforcement a crime of sexual assault, dating violence, domestic violence or stalking that you have experienced. You also have the right to decline to notify law enforcement of a crime of sexual assault, dating violence, domestic violence, or stalking if offered the option.**

## **Title IX Coordinator**

You may speak with the Title IX Coordinator at any time. If you would like to speak to the Title IX Coordinator after hours, contact Campus Safety at 717-361-1111 and request to speak with the Title IX Coordinator.

**Title IX Coordinator:**

**Gabrielle Reed** –Title IX Coordinator

**Office Address:** BSC 210

**Email:** reedg@etown.edu

**Telephone Number:** 717-361-3727

**Title IX Web page:** <https://www.etown.edu/offices/diversity/titleix/index.aspx>

**Online formal complaint or anonymous reporting form:**

[https://elizabethtown-advocate.symplicity.com/public\\_report](https://elizabethtown-advocate.symplicity.com/public_report)

The Title IX Coordinator coordinates Elizabethtown College’s efforts to comply with Title IX, including overseeing this Policy and the publication and dissemination of information required by Title IX. The Title IX Coordinator’s responsibilities include: (1) receiving and responding to Reports of conduct that may constitute a violation of this Policy; (2) coordinating the effective implementation of Supportive Measures; (3) designating Investigators, Facilitators, and Decision-makers to act pursuant to the Formal Complaint Process; (4) ensuring that the technology needed to conduct and record hearings is available; (5) implementing effectively any Remedies or discipline imposed by a Decision-maker upon a finding of a violation of this Policy; and, (6) complying with the record-keeping requirements of this Policy.

The Title IX Coordinator may, in some instances, be an Investigator, but can never be a decision-maker as a Hearing Board Member or Appeal officer.

The Deputy Title IX Coordinator supports the Title IX Coordinator in fulfilling their role and responsibilities and may serve as the Title IX Coordinator’s designee to carry out any response, action, initiative, project, or other responsibility outlined in this Policy. The Deputy Title IX Coordinator may be a Decision Maker provided they are not serving in the role of Title IX Coordinator for a case.

## **Timely Warning**

If a report of misconduct discloses a serious or immediate threat to the campus community, the College will issue a timely warning to the community to protect the health or safety of the community. The timely warning will not include any identifying information about the Complainant.

## **Title IX Administrator Pool**

Title IX Administrators are investigators, Hearing Board Members, Appeals decision makers, and other decision makers and facilitators involved throughout the Formal Complaint and Informal Processes associated with Regulatory Prohibited Conduct. The Title IX Administrator pool, along with the Title IX Coordinator and Deputy Coordinator, shall be trained on the definition of Title IX Sexual Harassment (Regulatory Prohibited Conduct), the scope of the

College's program or activity, the Formal Complaint Process, Relevance, technology to be used at a hearing, how to conduct hearings and Appeals, and how to serve impartially.

## Designation of Authority and College Counsel

Any College administrator or official whom this Policy empowers to act may request that the Title IX Coordinator delegate that authority to another appropriate College official, or the Title IX Coordinator in their own discretion may delegate that administrator's or official's authority to act to another appropriate person. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or obligations prevent the College official named in this Policy from fulfilling their designated role. The Title IX Coordinator may delegate their own responsibilities and/or authorities under this policy to any Deputy Title IX Coordinator or other appropriate official. Any College administrator or official involved in implementing this policy may seek the advice of the College's legal counsel, as approved by the College's legal liaison, and coordinated through the Title IX Coordinator.

## Statement on Privacy and Confidentiality

Elizabethtown College is committed to protecting the privacy of all individuals involved in a report of sexual misconduct. Every effort will be made to protect the privacy interests of all individuals involved. Privacy, confidentiality and privilege have distinct meanings under this Policy.

**Privacy** generally means that information related to a report of sexual misconduct will only be shared with a limited circle of individuals, including individuals who "need to know" to assist in the review, investigation, or resolution of the report or to deliver resources or support services. While not bound by confidentiality or privilege, these individuals will be discreet and respect the privacy of all individuals involved in the process. All participants in an investigation of sexual misconduct under this Policy, including Advisors and Witnesses, will be informed that privacy helps enhance the integrity of the investigation and protect the privacy interests of the parties, however, nothing in this Policy is intended to impose restraints on a Party's ability to discuss the allegations under investigation or to gather and present evidence as part of the resolution process.

Certain individuals are designated as having **confidentiality**. For reports made to employees designated with having confidentiality, the College will respect the reporting party's expectations of privacy to the extent permissible by law while still ensuring compliance with other reporting obligations. For example, reports involving minors are subject to mandatory reporting requirements. Individuals designated as having confidentiality are required to report the nature, date, time and general location of an incident to the Title IX coordinator. Individuals designated as having confidentiality will not share other information with the Title IX Coordinator or any other employee of the Institution without the permission of the disclosing party. Individuals designated as having confidentiality can provide information about the College and off-campus resources, support services and other options. As noted above, because of the confidential nature of these resources, disclosing information to or seeking advice from a confidential resource does not constitute a report or Formal Complaint to the College and will not result in a response or intervention by the College. A person consulting with a confidential resource may decide to make a report to the College and/or law enforcement. Confidential Resources are outlined in this Policy, and in the Written Notification of Resources provided to all Reporting Parties.

Communication with certain individuals may be **privileged** by operation of law and reports made to these individuals will not be shared with the Title IX Coordinator or law enforcement except in very limited situations, such as when

failure to disclose the information would result in imminent danger to the individual or to others or as otherwise required by law.

All College proceedings are conducted in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Clery Act, Title IX of the Education Amendments of 1972 (“Title IX”), Violence Against Women Act (VAWA), state and local law, and College policy. No information will be released from such proceedings, except as required or permitted by law and College policy.

The College may share non-identifying information about reports received in aggregate form, including data about outcomes and Disciplinary Sanctions.

## **Resources and Supportive Measures**

Supportive Measures are available with or without the filing of a Formal Complaint. Promptly after receipt of a Report, the Title IX Coordinator will contact the Complainant to discuss the availability of Supportive Measures. The Title IX Coordinator will also contact a Respondent to offer Supportive Measures promptly after a Formal Complaint is filed, whether or not a Formal Complaint Process proceeds. In determining the Supportive Measures to be provided, the Title IX Coordinator will make an individualized determination, considering the Complainant’s wishes and other relevant factors, of the non-disciplinary, non-punitive measures that will be provided to the Complainant and Respondent to restore or preserve equal access to the College’s Education programs or Activities, to protect the safety of the Parties, and/or to deter Sexual Misconduct.

All Supportive Measures will be provided without fee or charge and without unreasonably burdening the other Party. Supportive Measures will be maintained as confidential by the College to the extent that confidentiality will not impair the ability to provide the Supportive Measures.

Examples of Supportive Measures that may be implemented by the College include:

- Academic extensions or adjustments
- Campus escort services
- Changes in housing
- Changes in on campus work schedules or locations
- Counseling
- Increased security or monitoring of certain areas of the campus
- Modifications of class or activity schedules
- Mutual restrictions on contact between the Parties
- Provide information on how to access legal assistance, victim advocacy and immigration/visa assistance

All Employees who have experienced Sexual Harassment, who have provided a Report alleging Sexual Harassment, or have been alleged to have engaged in Sexual Harassment can seek confidential assistance through the Employee Assistance Program:

<https://www.etown.edu/offices/human-resources/Wellspan%20Brochure%20July%202017.pdf>

## **Reports of Potential Violations of this Policy**

Elizabethtown College strongly encourages anyone who has information about a potential violation of this Policy to provide a Report to the Title IX Coordinator or Deputy Coordinator. A Report is defined as a disclosure and does not constitute a Formal Complaint. The procedure for filing a Formal Complaint is described later in this Policy. Any

person may provide a Report of a potential violation to the Title IX Coordinator in person, by mail, by telephone or by electronic mail. Reports by mail, telephone or electronic mail may be made at any time, including outside of regular business hours.

A person may also file an anonymous report, which will be routed directly to the Title IX Coordinator. Anonymous reports may be submitted here: [https://elizabethtown-advocate.symplicity.com/public\\_report](https://elizabethtown-advocate.symplicity.com/public_report)

An anonymous report is defined as a disclosure, and does not constitute a Formal Complaint. The procedure for filing a Formal Complaint is described in this Policy.

**Title IX Coordinator:**

**Gabrielle Reed** –Title IX Coordinator

**Office Address:** BSC 210

**Email:** reedg@etown.edu

**Telephone Number:** 717-361-3727

**Reporting to Law Enforcement**

A victim of a crime is encouraged to, but not required to, report the incident to local law enforcement. The criminal process and the College's disciplinary process are mutually exclusive, and are not dependent upon one another. A person can pursue both, neither, or either. Victims have the option of notifying local law enforcement directly or receiving assistance from the College in doing so. If an individual requires assistance making contact with local law enforcement and scheduling a meeting time with a Police Officer or Detective, please contact one of the following:

**Gerald Kelley, Campus Safety Director** or ask for the supervisor on duty. 24/7 access: 717.361.1264 or visit the Campus Safety Office at 605 S. Mt. Joy Street

**Gabrielle Reed** –Title IX Coordinator

**Office Address:** BSC 210

**Email:** reedg@etown.edu

**Telephone Number:** 717-361-3727

To make a direct report to local law enforcement without assistance from the College, individuals should contact **911 or Lancaster County Wide Communications** at 717.367.1835. The dispatcher will ask for preliminary information, such as the name of the reporting person, phone number, address, and whether immediate assistance is needed. Lancaster County Wide Communications will then contact the appropriate local law enforcement agency, most likely the Elizabethtown Police Department. Some areas of Elizabethtown are under the jurisdiction of Northwest Regional Police Department. Crimes that occur within the Northwest Regional jurisdiction will be referred to that department. Once the local law enforcement agency is contacted by the Lancaster County Wide Communications, a police officer will contact the reporting person to gather more information and provide resources, like obtaining a restraining order (known locally as a Protection from Abuse order or a Sexual Violence Protection Order) or locations for a sexual assault forensic exam (SAFE).

Once local law enforcement has gathered information they may refer the reporting person to a police detective to conduct a more thorough investigation. Local law enforcement officials are willing to meet with individuals making a report in a location that is comfortable, either on-campus or at the local police department office.

## Orders of Protection

In Pennsylvania, there are different types of Civil Protection Orders that are available to individuals who have experienced domestic violence, dating violence, stalking, or sexual violence. Pennsylvania Coalition Against Rape

(PCAR) provides information about Sexual Violence Protections Orders: <https://pcar.org/sexual-violence-protection-orders>

A Protection from Intimidation Order (PFI) is appropriate in cases of stalking and harassment where the complainant is under 18 and the respondent is over 18. PFIs cannot be granted if both the complainant and respondent are over 18.

A Sexual Violence Protection Order (SVPO) is appropriate in cases of dating violence or sexual assault where the complainant and respondent do not have and have never had a family, household, or intimate partner relationship. An SVPO may be granted when the complainant and respondent are strangers, friends, acquaintances, co-workers, or neighbors.

If you have experienced domestic violence, dating violence, stalking, or sexual violence by a current or former intimate partner, spouse or former spouse, someone you have a child in common with, or a family member related to you by blood or marriage, you have the right to go to court and receive a Protection from Abuse Order (PFA), commonly referred to as a restraining order. A Protection from Abuse Order can include: Restrain the abuser from further acts of abuse; keep the abuser from entering your home, school or work; require the abuser to give up all weapons while the order is in effect; tell the abuser to stop stalking or harassing you or other persons in your family.

The Civil Protection Order process usually starts by filling out a form called a "petition" at the local county courthouse. For Elizabethtown College students the petition should be filed at the Lancaster Courthouse, 50 North Duke Street, Lancaster, PA 17602. Students or employees may contact the following individuals for more information about how to obtain a PFA:

**Gerald Kelley, Campus Safety Director** or ask for the supervisor on duty. 24/7 access: 717.361.1264 or visit the Campus Safety Office at 605 S. Mt. Joy Street

**Gabrielle Reed** –Title IX Coordinator

**Office Address:** BSC 210

**Email:** reedg@etown.edu

**Telephone Number:** 717-361-3727

#### **Lancaster Domestic Violence Legal Clinic**

35 E. Orange Street, Suite 201, Lancaster, PA 17602

717.291.5826

If you have obtained a Civil Protection Order or other protective order, you are encouraged to share a copy with Campus Safety. While Campus Safety officers do not have arrest powers, they will enforce the CPO to the extent possible by contacting local police when they are made aware of any violations of the CPO that occur on campus.

## **Responsible Administrators**

The College has designated Responsible Administrators to whom a person may report an incident and expect the information will be acted upon. A Responsible Administrator is required to share all reported information, including personally identifiable information, with Title IX Coordinator.

*If a report is made to anyone other than the Title IX Coordinator, or anyone **not** on the list of Responsible Administrators, the reporting party assumes the College has not received actual knowledge, and the information may not be acted upon.*

## **Responsible Administrators by Title and/or Department/Area Include:**

### Academic Personnel

- All faculty
- All Academic Deans
- Provost & Vice President for Academic Affairs and Faculty Development
- Dean of Faculty and Associate Provost for Academic Affairs
- Associate Provost for Institutional Effectiveness and Innovation

### Staff

- All employees and administrators are considered responsible employees, with the exception of those identified as Confidential Resources

### Student Employees

- Resident Assistants and Community Assistants
- Peer Mentors
- Kinesis Peer Academic Advisors
- Ubuntu Mentors
- Some student employees may be required to report information to their supervisors when functioning as a student employee (including but not limited to Bower's Center student employees, Admissions Overnight Hosts)

*The above information regarding Responsible Administrators does not, in any way, relieve a supervisor of their requirements to report, investigate and/or remediate any reported workplace discrimination or harassment under federal or state employment law. The College reserves the right to modify this list as needed. Modifications occurring after publication of this document for the academic year will be announced via Campus News.*

## **Other Campus Resources**

Some campus employees, other than those listed on the Responsible Administrator list above, can talk to a student Complainant, Alleged Victim or Reporter without being required to disclose personally identifiable information about the Alleged Victim to the Title IX Coordinator, but are still required to report non-personally identifiable information for statistical purposes only. Students can seek assistance and support from the employees listed below without triggering an investigation that would reveal the identity of the Alleged Victim. These employees are only required to share a limited report to inform the Title IX Coordinator of the date, time, general location and nature of the incident but, again, *not* information that would identify the Alleged Victim. This general information is necessary for the College to appropriately track patterns, evaluate the scope of the problem and formulate appropriate campus-wide responses. Before sharing the general report with the Title IX Coordinator, these employees will work to consult with the Complainant to ensure that no personally identifiable details about the Complainant are shared. These types of employees include but are not limited to the list below, and the College reserves the right to add employees to this list as deemed necessary by the Title IX Coordinator.

- **Counseling Services' front desk staff**, available at 717.361.1405 (daytime)
- **College Health Liaison** is available for consultation during regular college business hours. Call 717.588-1059
- **Assistant Director of Health Promotion** is available for consultation during regular college business hours. Call 717.361.1123.
- **Athletic Trainer** available at 717.361.1591 or 717.361.1564 during regular college business hours.

## Amnesty

The health and safety of every student at Elizabethtown College is of utmost importance. The College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time sexual misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report incidents of sexual misconduct. A witness to or individual who experience sexual misconduct, acting in good faith, who discloses any incident of sexual misconduct to College officials or law enforcement will not be sanctioned under the Code of Conduct for violations of alcohol and/or drug use policies occurring at or near the time of the incident(s) of sexual misconduct. The College may require the individual attend an approved alcohol or drug education program without assessing any charges for such program. Amnesty does not preclude or prevent action by police or other legal authorities pursuant to relevant state or federal criminal statutes.

The Formal Complaint Process begins with the filing of a Formal Complaint which alleges that a Respondent has engaged in Title IX Sexual Harassment, is signed by the Complainant or the Title IX Coordinator, and requests that Elizabethtown College investigate the allegation of Title IX Sexual Harassment. A Formal Complaint must be filed in electronic format by following this link: [https://elizabethtown-advocate.symplicity.com/public\\_report](https://elizabethtown-advocate.symplicity.com/public_report)

## Response to Potential Violations of this Policy

When the Title IX Coordinator receives a Report, the College will respond by: (A) equitably offering Supportive Measures to the Complainant and Respondent (as outlined under "Supportive Measures" above), whether or not a Formal Complaint is filed; and (B) imposing disciplinary sanctions or other actions that are not Supportive Measures upon the Respondent *only* when the Respondent is found responsible for a violation of this Policy through a completed Formal Complaint Process. However, the College may impose an emergency removal or administrative leave as provided in this Policy. The Title IX Coordinator will provide each Complainant or reporting individual a Written Notification of Resources.

## Assessment of Risk

When the Title IX Coordinator receives a Report of alleged Sexual Misconduct or a Formal Complaint alleging Sexual Misconduct, the Title IX Coordinator will seek to gather information to undertake an initial assessment of any risk of harm to individuals or to the campus community and the description of the alleged misconduct in order to evaluate the appropriate response.

The first step of the assessment is a discussion between the Title IX Coordinator and the Complainant. The purposes of the discussion are to:

- assess the nature and circumstances of the allegations;
- address the immediate physical safety and emotional well-being of the Complainant;
- notify the Complainant of the right to contact law enforcement (or not) and seek medical treatment;



- provide the Complainant with information about on- and off-campus resources;
- discuss the range and implementation of Supportive Measures;
- ensure Director of Campus Safety has information necessary to enter the Report into the College's daily crime log and/or initiate a timely warning; and
- explain the College's policy prohibiting retaliation.

The Title IX Coordinator will take any action necessary to address any risk of harm identified by the Title IX Coordinator, including implementation of Supportive Measures, initiation of actions designed to protect the larger campus community, or Emergency Removal of a Respondent. A decision to remove a Respondent from campus pending the Formal Complaint Process will follow the Emergency Removal of a Respondent process described in this Policy. At the Title IX Coordinator's discretion, one or more other Campus Officials may be included in the initial assessment or in evaluating information gathered in the initial assessment.

## **Formal Complaint Process**

After the initial assessment of the information gathered, the Title IX Coordinator will take one of the following steps regarding the Formal Complaint Process:

### **1. Initiate Formal Complaint Process**

If the Title IX Coordinator determines that the alleged misconduct falls within the definitions of Regulatory Prohibited Conduct defined in this Policy, and a Formal Complaint has already been submitted, the Title IX Coordinator will proceed to initiate the Formal Complaint Process, unless the Formal Complaint proceeds to Informal Resolution.

If a Formal Complaint has not yet been submitted, the Title IX Coordinator will advise the Complainant that a Formal Complaint is required to initiate an investigation. The Title IX Coordinator will provide the Complainant a Formal Complaint form link for the Complainant's completion and signature. The Formal Complaint form can be found here: [https://elizabethtown-advocate.symplicity.com/public\\_report](https://elizabethtown-advocate.symplicity.com/public_report)

The electronic signature on the submission is considered the complainant's signature. Once a signed Formal Complaint is submitted, the Title IX Coordinator will proceed to initiate the Formal Complaint Process, unless the Formal Complaint proceeds to Informal Resolution.

If the Complainant determines not to file a Formal Complaint, and the Title IX Coordinator determines, in their discretion, that the allegations must be investigated, the Title IX Coordinator may initiate the Formal Complaint Process by completing and signing a Formal Complaint.

### **2. Refer for Action Pursuant to Different Resolution Methods**

With or without a Formal Complaint, when the initial assessment concludes with a determination that the alleged misconduct does not fall within the definitions of Regulatory Prohibited Conduct defined within this Policy but involves Non-Regulatory Prohibited Conduct, or other conduct that if found to have occurred violates another College policy, the matter will be referred for further action under the applicable policy

under the Student Code of Conduct, the Faculty Handbook, or the Employee Handbook. The determination regarding next steps will be communicated to the Parties in writing. If a Formal Complaint has been filed, the Title IX Coordinator shall follow the procedures for Dismissal of a Formal Complaint set forth in Formal Complaint Process.

### **3. Emergency Removal of a Respondent**

Elizabethtown College may implement emergency removal of a Respondent, whether or not a Formal Complaint has been submitted, if the Respondent poses an immediate threat to the physical health or physical safety of any student or other individual directly resulting from allegations of this Policy. Prior to implementing an emergency removal, the Title IX Coordinator will first gather information to conduct an individualized safety and risk analysis. The analysis will be conducted by the Title IX Coordinator and/or designees requested to conduct the initial assessment. Should the Title IX Coordinator, on their own or in consultation with others, determine an emergency removal is necessary, they shall make the recommendation to the Vice President for Student Life and Dean of Students if the respondent is a student, or the Director for Human Resources if the respondent is an employee. The Title IX Coordinator shall submit the request in writing, and provide all relevant information and evidence utilized to determine this recommendation.

The formal removal action shall be carried out by the Vice President for Student Life and Dean of Students or Director of Human Resources. If the Vice President for Student Life or the Director of Human Resources disagrees with the recommendation for removal, and chooses not to remove the party from campus, they must respond in writing within 24 hours of the request providing the rationale for the decision. Said written document will become part of the case file.

#### **A. Factors to be Considered**

The analysis of whether an immediate threat to the physical health and physical safety risk exists will focus on the specific Respondent and consider the specific circumstances arising from the allegations of violations of this Policy that potentially pose an immediate threat to a person's physical health or physical safety. If a person expresses a subjective fear, the College will consider it and will also apply an objective reasonable person standard. The College will consider the Respondent's propensity, opportunity, and ability to carry out a stated or potential threat. The analysis will evaluate whether Supportive Measures or other less restrictive means can negate or sufficiently minimize the threat. As part of its analysis, the College may rely on objective evidence and current medical knowledge and may consult with licensed professionals (including non-employees) to analyze the information gathered. The College shall also consider Respondent's rights, if any, under applicable federal and/or state disability laws.

The relationship between a threat and the physical health or physical safety of any student or other individual will also be carefully evaluated. In some but not all cases, threatening speech or virtual interactions without an associated action may rise to the level of a threat to physical health or physical safety. If the threat posed is in the nature of potential emotional impact only, the College will instead focus on identifying appropriate Supportive Measures.

The College will also closely examine whether the threat arises from allegations of conduct that could

constitute a violation under this Policy. As an example, an immediate threat to physical safety is likely present when a Respondent threatens physical violence against the Complainant in response to the Complainant's allegations of verbal harassment by the Respondent. Threats of self-harm will be addressed under other applicable policies. If the individualized safety and risk analysis results in a determination that a Respondent's actions pose an immediate and identified threat, but do not arise from allegations of violations of this Policy, the College will respond pursuant to other applicable policies and/or procedures.

The College's assessment of the appropriateness of emergency removal will account for its multiple potential impacts, including: whether providing Supportive Measures will be sufficient to ensure equal educational access; the adverse impacts of separating a Respondent from educational opportunities and benefits; the protection of the health and safety of the College community; the anticipated timeline of an investigation and hearing. Because these evaluations are necessarily fact specific, in some cases the College may determine that restricting a Respondent's participation in specific programs or activities will adequately address the situation.

#### **B. Emergency Removal is Not Discipline nor a Determination of Responsibility**

At all stages of the process, Elizabethtown College will ensure that the emergency removal will not impose a premature sanction on the Respondent or circumvent the Formal Complaint Process. An emergency removal does not equate to a determination that a Respondent has engaged in a violation of this Policy and will not result in a presumption of responsibility in any subsequent Formal Complaint Process.

#### **C. Notice of Emergency Removal and Appeal**

In the event the College determines that emergency removal of a Respondent is appropriate, the Respondent will be notified immediately in writing. The written notice will include details about the specifically identified emergency threat of physical safety or harm underlying the decision, as well as information about the Respondent's immediate opportunity to challenge the removal decision by filing an Appeal.

## **Placement of Employee on Administrative Leave**

In the event a Formal Complaint alleges conduct that could constitute a violation of this Policy and identifies an Employee as Respondent, the College may decide to place the Respondent on administrative leave, in emergency and non-emergency situations. The purpose of such an administrative leave is to allow a temporary separation of the Employee while the Formal Complaint Process is ongoing. The Director for Human Resources, in consultation with the Title IX Coordinator, will determine the terms and conditions of the leave on a case-by-case basis. The decision process for placing an Employee-Respondent on leave will respect their rights under Title VII, Americans with Disabilities Act, and all other applicable employment laws.

All entitlements established in this section apply equally to the Parties. The Formal Complaint Process applies when a Formal Complaint is signed and submitted, whether by a Complainant or by the Title IX Coordinator on behalf of the College. This process is grounded in a presumption that a Respondent is not responsible unless and until a Determination of Responsibility at the conclusion of a resolution process.

## **Filing of Formal Complaint**

The Formal Complaint Process begins with the filing of a Formal Complaint which alleges that a Respondent has engaged in a violation of this Policy, is signed by the Complainant or the Title IX Coordinator, and requests that Elizabethtown College investigate the allegation of Sexual Misconduct. A Formal Complaint must be filed in electronic format. A link to the complaint form will be provided to the Complainant by the Title IX Coordinator and can be found here: [https://elizabethtown-advocate.symplicity.com/public\\_report](https://elizabethtown-advocate.symplicity.com/public_report)

## **Dismissal or Withdrawal of Formal Complaint**

If at any time during the Formal Complaint Process the Title IX Coordinator determines that the alleged misconduct does not fall within the definitions of Regulatory Prohibited Conduct defined within this Policy, the Title IX Coordinator will dismiss the Formal Complaint from the Title IX Investigation process by issuing a Notice of Dismissal.

If at any time during the Formal Complaint Process the respondent is no longer enrolled or employed by the College or the Title IX Coordinator determines that specific circumstances prevent the College from gathering evidence sufficient to reach a determination of the allegations of the Formal Complaint, the Title IX Coordinator may dismiss the Formal Complaint by issuing a Notice of Dismissal.

The Notice of Dismissal, which will be issued to the Complainant within five (5) Business Days of the Title IX Coordinator's determination, will include the reasons for the dismissal. A dismissal of a Formal Complaint from the Formal Complaint Process shall not prevent the College from addressing the allegations in the Formal Complaint under another applicable policy of Elizabethtown College. Any Party has the right to submit an Appeal from dismissal of a Formal Complaint.

If, at any time during the Formal Complaint Process, the Complainant notifies the Title IX Coordinator in writing that they wish to withdraw the Formal Complaint or any allegations in the Formal Complaint, the Title IX Coordinator may dismiss the Formal Complaint. Alternatively, the Title IX Coordinator may decide that proceeding with the Formal Complaint Process is necessary. In making that determination, the Title IX Coordinator must weigh the Complainant's wishes and the College's obligations to eliminate Sexual Misconduct, prevent its recurrence, and remedy its effects.

## **Timeframe**

Elizabethtown College seeks to resolve all Reports of Sexual Misconduct promptly, thoroughly, fairly, and equitably. The timeframes which the College strives to meet are set forth in this Policy. The Title IX Coordinator will inform the Parties regularly of the status of the Formal Complaint Process, including the status of investigation and other steps in the process. Circumstances may arise that require the extension of anticipated time frames. Such circumstances may include the complexity of the allegations, the number of Witnesses involved, the availability of the Parties, Witnesses, or others involved, the effect of a concurrent criminal investigation, breaks or other closures of campus, concurrent law enforcement activity, the need for language assistance or accommodation of disabilities, or unforeseen circumstances. In the event timelines are modified, the Title IX Coordinator will provide written notification to the Parties.

Elizabethtown College's Title IX Investigation process is designed to allow for the thorough, impartial, and reliable gathering of information resulting in a comprehensive investigation report summarizing relevant, admissible evidence. The College strives to complete its investigation within thirty (30) Business Days, understanding that numerous issues arise during investigations that may justify a good cause extension of the timeline.

## **Voluntary Participation**

Parties and Witnesses are not required to participate in the Formal Complaint Process, but without their live testimony at the hearing, the Hearing Board cannot rely upon their Statements. The College may not threaten, coerce, or intimidate a Party or Witness into participating, nor may the College retaliate against a Party or Witness for declining to participate in any part of the Formal Complaint Process.

## **Right to Advisor of Choice**

Each Party has the right to choose an Advisor to assist and advise them (at the Party's own expense, if the Advisor is paid). Each Party has the right to be accompanied by their Advisor throughout the Formal Complaint Process, including during all related meetings and hearings. Parties are encouraged to identify an Advisor as soon as practical, as Advisors play an important role in supporting Parties. Each Party must notify the Title IX Coordinator promptly of the name, title, and contact information for their Advisor and any change in their Advisor. If a Party does not select an Advisor and the matter proceeds to a Live Hearing, an Advisor will be appointed by the College for the hearing, at no fee to the Party, to ask Cross-examination Questions on that Party's behalf. There is no requirement the Advisor appointed by the College be of equal legal knowledge or skill to the Advisor obtained by another party. For example, if one party obtains an attorney, the College is under no obligation to provide the other party an attorney.

Advisor availability shall not place undue burden on process timeline. While reasonable requests may be made, requests for pauses in process to accommodate advisor schedules will not be entertained if said pauses jeopardize the process timeline. The Title IX Coordinator will make this determination.

Advisors are not permitted to speak on behalf of the party with the exception of cross-examination in a Live Hearing process. In all other aspects of the process, the role of the Advisor is to be a support person.

The roles and obligations for advisors are outlined in the Formal Complaint Process under "Roles and Obligations for Advisors".

## **Request to Remove an Investigator, Hearing Board Member, or Title IX Coordinator**

Parties have the right to request that the Title IX Coordinator remove an Investigator or member of the Hearing Board based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.

### **Challenge to an Investigator**

A challenge to an Investigator must be raised in writing within five (5) Business Days of receipt of the Notice of Investigation. Parties have the right to request that the Title IX Coordinator remove an investigator based on reasonable and articulated grounds of bias, conflict of interest, or an inability to be fair and impartial. The Title IX Coordinator will determine whether to remove the Investigator. If the Investigator is not removed, the Title IX Coordinator will

notify the requesting Party of the decision. If an Investigator is removed and replaced, the Title IX Coordinator will send written notification to the Parties of the name of the new Investigator.

#### **Request to Remove a Hearing Board Member**

Following receipt of the Notice of Live Hearing, Parties have the right to request that the Title IX Coordinator remove a member of the Hearing Board based on reasonable and articulated grounds of bias, conflict of interest, or an inability to be fair and impartial. This request must be raised in writing within two (2) Business Days of receipt of the Notice of Live Hearing. The Title IX Coordinator will determine whether to remove the Hearing Board member. If the Hearing Board member is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If a Hearing Board member is removed and replaced, the Title IX Coordinator will send written notification to the Parties of the name of the new Hearing Board member.

#### **Request to Remove the Title IX Coordinator**

A Party may request that someone other than the Title IX Coordinator oversee the Formal Complaint Process based on reasonable and articulated grounds of bias, conflict of interest, or an inability to be fair and impartial. Any such request must be submitted in writing to the Director of Human Resources as soon as a Party becomes aware of any such grounds for removal. The Director of Human Resources will determine whether to designate another person perform the Title IX Coordinator's duties for the specific matter, and if necessary, will identify the person to undertake those duties. In the event the Director of Human Resources has a conflict of interest, they shall forward the request to the Senior Vice President for Administration and Finance, who will identify the person to perform those duties.

## **Investigation, Informal Resolution, Concurrent Law Enforcement Activity**

### **1. Initiate an Investigation**

The Title IX Coordinator will initiate an investigation, unless the Formal Complaint is proceeding through the Informal Resolution Process. The Title IX Coordinator will issue a Notice of Investigation to known Parties sufficiently in advance of any request to meet with the Investigator. This Notice of Investigation will include:

- Notice of these grievance procedures, including the Informal Resolution process, and a copy of this Policy.
- The conduct alleged to violate this Policy, and the date and location of the alleged incident, if known.
- Known Parties involved in the alleged incident
- A statement that the Respondent is presumed not responsible for the alleged misconduct and that a Determination of Responsibility will be made at the conclusion of the process.
- Notice of the Parties' right to an Advisor of choice, who will be permitted to accompany them to investigation meetings, interviews, and any hearing and to review materials provided to their advisee throughout the process.
- Notice of and citation to the College's prohibition on knowingly making false Statements or submitting false information during this process.

If during the course of an investigation, new or additional allegations arise that require investigation, the Title IX Coordinator will send the Parties an updated Notice of Investigation revising the scope of the investigation.

## **2. Option of Informal Resolution**

If the Parties voluntarily agree to proceed with the Informal Resolution Process, the Title IX Coordinator may refrain from initiating the Formal Complaint Process or may pause an ongoing Formal Complaint Process.

## **3. Concurrent Law Enforcement Activity**

When the Title IX Coordinator receives a Report of Title IX Sexual Harassment to which it has determined the College must respond through its Formal Complaint Process, the process continues regardless of whether a Complainant has made or decides to make a report to law enforcement. The filing of a report with law enforcement, or an ongoing law enforcement investigation or proceeding does not relieve the College of its obligation to address the Complaint through its Formal Complaint Process. At the Title IX Coordinator's discretion, the College may temporarily pause its investigation at the request of law enforcement. In that circumstance, the Title IX Coordinator will send written notice to the Parties explaining the reason for pausing the investigation.

# **Consolidation of Certain Formal Complaints**

If there are multiple Complainants and one Respondent, the Title IX Coordinator may consolidate Formal Complaints where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances. All Parties will be notified in writing of a decision to consolidate Formal Complaints. The Title IX Coordinator is not obligated to consolidate the allegations.

# **Assignment of Investigator**

The Title IX Coordinator will supervise the investigation, starting with determining who will serve as Investigator(s). The Investigator(s) may be a College Employee(s), an external Investigator(s), or a team of Investigators that pairs an external Investigator with a College Employee. All Investigators will conduct the investigation with a presumption that the Respondent is not responsible and will act without bias or conflict of interest.

# **Process Overview**

The Investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any Witnesses. The Investigator will provide advance written notice to Parties of the date, time, location, participants, and purpose of any requested meeting(s). Investigation interviews will be conducted in a thorough, impartial, and fair manner; all involved individuals will be treated with appropriate sensitivity and respect.

Interviews will be supplemented by the gathering of any physical, documentary, and other evidence, as appropriate and available. The burden of gathering relevant, admissible information sufficient for the College to reach a determination of whether a violation of this Policy has occurred rests on the College. The Parties will have an equal opportunity to submit evidence and suggest Witnesses (including fact and expert Witnesses). The Investigator will decide which individuals to interview based on the information the Investigator gathers as part of the investigation and, with respect

to Witnesses offered by a Party, the Investigator may ask the Witnesses to describe the information the Party expects the Witness to provide. The Title IX Coordinator may direct that additional interviews be conducted.

The Investigator will not ask questions or gather information or documents protected by a legally recognized privilege, including treatment records of a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a professional capacity, without written consent to use such documents in the Process from the person protected by the privilege. The Investigator will not seek information about a Complainant's sexual predisposition and will only allow submission of or pursue information about a Complainant's prior sexual behavior if such questions and evidence: (1) are offered to prove that someone other than the Respondent committed the alleged misconduct; or, (2) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to establish Consent.

The investigation will be conducted in a manner that is respectful of individual privacy concerns. To be clear, however, confidentiality cannot be promised during an investigation because, for example, the Investigator may need to speak with Witnesses and others to gather evidence. The Parties are not restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence. However, where the investigation reveals intentional efforts by a Party to fabricate or alter information they submit or to influence the information a Witness provides to the Investigator, disciplinary action may be taken.

## **Parties' Review of/Response to Information**

At the conclusion of the investigation, the Investigator will assemble all inculpatory and exculpatory information gathered during the investigation that is directly related to the allegations of the Formal Complaint, including information upon which the College does not intend to rely in reaching a determination regarding responsibility. The Investigator will redact information that is unrelated to the allegations of the Formal Complaint or otherwise not admissible in the Formal Complaint Process (i.e., because it is subject to an unwaived legally recognized privilege or constitutes prior sexual history not offered to establish Consent or that Respondent did not engage in the alleged misconduct). The Investigator will create a list describing information it has redacted or removed as irrelevant, inadmissible, or not directly related to the allegations of the Formal Complaint, which it may allow the Parties to inspect.

The assembled information will then be shared with the Parties and their Advisors in a shared electronic format. Elizabethtown College will require Parties and their Advisors to agree to restrictions and/or sign a non-disclosure agreement prohibiting dissemination of any of the information provided for inspection and review or use of such evidence for any purpose unrelated to this Formal Complaint Process. The Parties will have at least ten (10) Business Days to review the assembled information and submit a written response to it.

The Investigator will review the Parties' responses to evaluate whether further investigation may be required to ensure the investigation is thorough and complete. In consultation with the Title IX Coordinator, the Investigator will determine any further action indicated by the Parties' responses and develop a plan to complete the investigation.

## **Investigation Report**



After considering the Parties' responses and conducting any additional investigation indicated by those responses, the Investigator will prepare a report summarizing all of the relevant, admissible information obtained during the investigation, including Inculpatory Evidence and Exculpatory Evidence. The Investigator will incorporate the Parties' responses to the report, as well as an explanation of any additional steps taken after receipt of Party responses and include any related materials. All of these written submissions and all information gathered during the investigation will collectively be considered the investigation report.

To the extent that the investigation report includes an assessment of Party and Witness Credibility, Credibility determinations may not be based upon a person's status as a Complainant, Respondent or Witness.

## **Parties' Review of/Response to Investigation Report**

When the investigation report is complete, the Title IX Coordinator will provide a copy of it to the Parties and their Advisors in electronic format for their review and written response. Elizabethtown College will require Parties and their Advisors to agree to restrictions and/or sign a non-disclosure agreement prohibiting dissemination of any of the information provided for inspection and review or use of such evidence for any purpose unrelated to this Formal Complaint Process. The Parties shall have five (5) Business Days to review and respond to the investigation report. The investigation report and all evidence will be available at any hearing to give each party equal opportunity to refer to the evidence. Any hearing on the allegations investigated will not be held sooner than ten (10) Business Days after the investigation report is *provided* to the Parties and their Advisors.

## **Determination After Investigation**

At the conclusion of the investigation, the Title IX Coordinator will review the investigation report to determine whether the conduct, if proved, falls within the definition of regulatory prohibited conduct defined in this Policy. When the alleged conduct, if proved, falls within the definition of regulatory prohibited conduct defined in this Policy, the Title IX Coordinator will prepare a Notice of Charge based on information contained in the investigation report.

If the conduct, even if proven, does not fall within the definition of regulatory prohibited conduct defined in this Policy, the College must dismiss the Formal Complaint. The College may dismiss a Formal Complaint if the Title IX Coordinator determines: that there is not sufficient cause to believe the alleged conduct may have occurred; the Respondent is no longer enrolled or employed by the College; or specific circumstances prevent the College from gathering sufficient evidence to reach a Determination of Responsibility or No Responsibility.

In such instances where Dismissal is appropriate, the Title IX Coordinator will issue a Notice of Dismissal, including the reasons for the dismissal, to the Parties simultaneously within five (5) Business Days of the Title IX Coordinator's determination. If the alleged conduct would potentially violate a different College Policy, the Notice of Dismissal will direct the Parties to that policy. The Parties have a right to submit an Appeal from a dismissal of a Formal Complaint.

## **Notice of Charge**

If the Formal Complaint is not dismissed, the Title IX Coordinator will issue a Notice of Charge simultaneously to the Parties. The Notice of Charge shall not be issued before the Parties have had five (5) Business Days to review and respond to the investigation report and will be sent to the Parties within ten (10) Business Days of the conclusion of the investigation. The hearing shall not be scheduled sooner than ten (10) Business Days after the Notice of Charge is issued. The Notice of Charge will include the following information:

- a brief factual summary of the conduct alleged to have violated the Policy, including date, time, and location;

- the specific Policy provision(s) at issue; and
- possible sanctions associated with a finding of responsibility for the alleged Policy violation(s).

The Notice of Charge will attach a copy of this Policy or include the website where this Policy is available.

Following the issuance of the Notice of Charge, if Informal Resolution is not being conducted, the Formal Complaint Process proceeds to a Live Hearing.

## Notice of Live Hearing

The Notice of Live Hearing will be sent to the Parties simultaneously within ten (10) Business Days of the delivery of the Notice of Charge and at least five (5) Business Days before the scheduled hearing date. The Notice of Live Hearing may be, but need not be, sent with the Notice of Charge. The Notice of Live Hearing will include the following information:

- the date, time, and location of the Live Hearing;
- the Live Hearing will be recorded via an audio recording, or audiovisual recording when possible;
- the composition of the Hearing Board designated by the Title IX Coordinator; and,
- a statement that there is a presumption of No Responsibility on the part of the Respondent until a determination regarding responsibility is made at the conclusion of the Formal Complaint Process.

In addition, the Notice of Hearing will attach a copy of this Policy or include a reference to the website where this Policy is published.

### Hearing Board Chair

Hearings are convened by the Title IX Coordinator. The Title IX Coordinator oversees all hearings. In rare circumstances when the Title IX Coordinator is unavailable or ineligible to do so, the Title IX Coordinator will designate the person to convene and oversee the Hearing Board process. The Title IX Coordinator will be the non-voting chair of the Hearing Board during Live Hearings, serving as a process and policy advisor to the Hearing Board. In this role, the Title IX Coordinator may be referred to as the Hearing Officer. The Title IX Coordinator is never a Decision-maker, whether in connection with a Live Hearing or an Appeal.

### Hearing Board Members

Prior to the Live Hearing, the Hearing Board will have read all of the information in the investigation report. The Parties will have the same information as the Hearing Board. Hearing Board members are drawn from the pool of Title IX Administrators. There will be three Hearing Board Members in addition to the non-voting chair (Title IX Coordinator).

## Gathering Information

The Hearing Board will focus its questions on those areas where it needs clarification or more information. The Hearing Board will not necessarily need the Parties or Witnesses to repeat everything they shared during the investigation, but as the Decision-maker(s), the Hearing Board is obligated to come to its own Findings of Fact.

The Hearing Board has the right and responsibility to ask questions and elicit information from Parties and Witnesses on the Hearing Board's own initiative to aid the Hearing Board in obtaining relevant information, both inculpatory and exculpatory.

Only members of the Hearing Board may ask questions of any person testifying, except in connection with Cross-examination Questions asked by Advisors. The Hearing Board is responsible for ensuring that it has sought and probed all information necessary to make an informed decision. At times, the Hearing Board will need to ask difficult or sensitive questions in order to understand the allegations and related information and to gain a full understanding of the context. If at any time a Party does not understand a question or why the Hearing Board is asking a question, the Party should let the Hearing Board know. The Hearing Board will explain and modify its question at its discretion.

The Parties have equal rights to present information in front of the Hearing Board, which ensures that the Hearing Board has the benefit of each Party's perspectives about the evidence. This right includes calling Witnesses. Parties have no right to self-representation and may not ask questions directly of the other Party or Witnesses.

## **General Considerations for Evaluating Testimony and Evidence**

1. While the opportunity for cross-examination is required in all hearings under this Policy, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision Maker(s).
2. Decision Maker(s) shall not draw inferences regarding a Party or Witness' credibility based on the Party or Witness' status as a Complainant, Respondent, or Witness, nor shall it base its judgments in stereotypes about how a Party or Witness would or should act under the circumstances.
3. Generally, credibility judgments should rest on the demeanor of the Party or Witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.
4. Credibility judgments should not rest on whether a Party or Witness' testimony is non-linear or incomplete, or if the Party or Witness is displaying stress or anxiety.
5. Where a Party or Witness' conduct or statements demonstrate that the Party or Witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision Maker(s) may draw an adverse inference as to that Party or Witness' credibility.
6. Decision Maker(s) will afford the highest weight relative to other testimony to first-hand testimony by Parties and Witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e., tending to prove and disprove the allegations) evidence will be weighed in equal fashion.
7. The Final Rule requires the College to admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the Decision Maker(s) will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.
8. The Final Rule requires the College allow parties to call character witnesses to testify. The College does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Decision Maker(s) will be instructed to afford very low weight to any non-factual character testimony of any Witness.

## **Role and Obligations of Advisors**

1. The Advisor is present to provide support to the Party and not to serve as a proxy voice for the Party.

2. Advisors may not speak during the hearing process, except where permitted to present Cross-examination Questions. Therefore, in all instances other than Cross-examination Questions, Advisors may not speak to the Hearing Board, make statements or arguments, or answer questions.
3. Advisors conducting Cross-examination must be capable of understanding the purpose or scope of Cross-examination. Equal competency between the Parties' Advisors is not required.
4. When conducting Cross-examination, Advisors need not be advocates for Parties, but simply may be individuals who ask questions.
5. Advisors can confer quietly with their advisee as needed, but if there is a need for an extended discussion, the Party should ask for a break in the Live Hearing.
6. Advisors cannot direct the Party how to answer a question.
7. Advisors should conduct themselves quietly and professionally, must not disrupt the proceedings and must comply with any rules of decorum imposed by the College. An Advisor who does not do so may be removed from the Live Hearing. In that instance, the Party may select another Advisor or the College will appoint a substitute Advisor.

## **Hearing Location**

Live Hearings may be conducted with all Parties physically present in the same geographic location or, at the Title IX Coordinator's discretion, any or all Parties, Witnesses, and other participants may appear at the Live Hearing virtually, with the Parties being able to see and hear each other and Witnesses live.

At the request of either Party, the Title IX Coordinator will provide for the entire Live Hearing (including Cross-examination) to occur with the Parties located in separate rooms with technology enabling the Parties to see and hear each other. Unlike Parties, Witnesses do not have the right to demand to testify in a separate room, but Title IX Coordinator, in its discretion, may permit any participant to appear remotely.

## **Recording of Live Hearing**

The College will create an audio or audiovisual recording of the entire Live Hearing. The recording or transcript will be available to the Parties for inspection and review but is the property of the College. Inspecting and reviewing recordings of the hearing will be made available utilizing the same methods and restrictions outlined under "Parties Review of/Response to Information".

## **Scope of the Live Hearing**

The Live Hearing will relate solely to charges set forth in the Notice of Charges issued to the Parties. If the Parties or any Witnesses share information that goes beyond these charges, the Hearing Board will redirect the speaker to the charges at hand.

Parties may be accountable for additional violations discovered through the Formal Complaint Process even if they do not appear in the Notice of Charge/Notice of Live Hearing. In this instance, a separate Complaint Process under this Policy, or under other applicable policies, may be commenced.

## **Attendance at the Hearing**

The Live Hearing is closed, meaning it is not open to the public. Witnesses may be present only for their individual meeting with the Hearing Board. Advisors and Parties may be present throughout the proceeding. If a Party, after having been given notice, does not appear at the Live Hearing, the Live Hearing will be conducted in their absence, and the Party's Advisor may appear and conduct Cross-examination. In the event neither a Party nor their Advisor appear at the hearing, the College will provide an Advisor to appear on behalf of the non-appearing Party. The College may have Counsel present to monitor the process.

## **Honesty**

Parties and other individuals who offer information at a Live Hearing are expected to respond honestly and to the best of their knowledge. The Hearing Board may recall any Party or Witness for further questions and to seek additional information as it deems necessary. A Party or Witness who intentionally provides false or misleading information may be subject to discipline under this Policy or other applicable policies.

## **Cross-examination Questions**

### **1. Advisors Conduct Cross-examination**

Advisors are allowed, on behalf of the Party they are advising, to cross-examine the other Party and Witnesses by asking relevant questions and follow-up questions, including questions challenging Credibility.

### **2. Relevance Determination Before Answering**

Before a Party or Witness answers a Cross-examination Question, the Hearing Board will determine if the question is relevant. If a question is deemed irrelevant, the Hearing Board will explain why. The requirement of Relevance applies throughout the hearing, including during Cross-examination, and will be determined by the Hearing Board. Parties should understand that the process of Cross-examination may be difficult and may feel uncomfortable because its purpose is to promote the perspective of the other Party. Cross-examination Questions may not be submitted in writing in advance of the Live Hearing or during the Live Hearing for purposes of seeking an evaluation of Relevance.

## **Breaks**

The Hearing Board may need to take breaks during testimony to ensure that it can confer regarding the information that has been offered and can determine whether further questions are necessary. At any time, a Party may request a break to talk with their Advisor or for another reason. In almost all instances, a break will be allowed.

## **Rape Shield Protections**

All questions and evidence about Complainant's sexual predisposition or prior sexual behavior are irrelevant unless offered to prove that someone other than the Respondent committed the alleged misconduct or offered to prove Consent.

# Order of Live Hearing

1. The Chair will call the Live Hearing to order and will explain the hearing process, which will include a reading of the charge(s) at issue and will provide an opportunity for all Parties to ask procedural questions prior to opening statements.
  2. The Parties shall be informed that the hearing is being recorded. The recording is the sole official verbatim record of the Live Hearing and is the property of the College.
  3. The Complainant may present an opening statement related to the charges.
  4. The Respondent may present an opening statement related to the charges.
  5. The Hearing Board will ask the Complainant questions relevant to the charges.
  6. The Respondent's Advisor may ask Complainant relevant questions and follow-up questions, including those challenging Credibility (Cross-examination Questions)
  7. The Hearing Board will ask the Respondent questions relevant to the charges.
  8. The Complainant's Advisor may ask Respondent relevant questions and follow up questions, including those challenging Credibility (Cross-examination Questions).
1. The Hearing Board may call Witnesses to provide relevant information to the Hearing Board.
  2. At the conclusion of each Witness, Complainant and Respondent's Advisors may ask each Witness relevant questions and follow up questions, including those challenging Credibility (Cross-examination Questions).
  3. At the conclusion of the testimony of the Parties and the Witnesses, the Parties will be able to make a closing statement, with the Complainant going first and the Respondent going next.
  4. The Chair will announce that the Live Hearing is concluded.

# Hearing Board Deliberations and Written Determination

When the Live hearing concludes, the Hearing Board will deliberate and make its decision in accordance with the preponderance of the evidence Standard of Evidence. The Hearing Board will issue a Written Determination, which will be sent to the Parties simultaneously within fifteen (15) Business Days of the conclusion of the Live Hearing. The Written Determination will include:

- Procedural History
- Summary of allegations in Notice of Charge/Notice of Live Hearing
- Policy provisions at issue
- Findings of Fact related to each allegation potentially constituting Title IX Sexual Harassment, made by the applicable standard of evidence
- Rationale (or evidentiary basis) for the Findings of Fact related to each allegation, which should include an evaluation of the weight or Credibility of admissible, relevant evidence
- A determination of whether the conduct found to have occurred violates this Policy (Determination of Responsibility) or not (Determination of No Responsibility)
- Rationale (or evidentiary basis) for the Determination of Responsibility or No Responsibility
- A statement of any disciplinary sanctions imposed on the Respondent and the rationale for the sanctions
- A statement of whether Remedies will be provided to the Complainant, using the phrase: "Remedies designed to restore or preserve equal access to Elizabethtown College's Education Program or Activity will be provided by the College to the Complainant. "The nature of such Remedies will not appear in the Written Determination. Remedies that do not directly affect the Respondent will not be disclosed to the Respondent.
- Information about how to file an Appeal and how to access the transcript or recording before the time to file an Appeal lapses.

# Possible Sanctions

The Title IX Coordinator is responsible for the effective implementation of any Sanctions or Remedies.

The following sanctions and/or conditions may be imposed following a Determination of Responsibility for a violation of this Policy. The described range of sanctions is required by Federal law under Title IX and that the published range is purely for purposes of notice as to the possibility of a range of Remedies and disciplinary sanctions and does not reflect the probability that any particular outcome will occur.

## Students

### Status Sanctions

Status sanctions pertain to a student's relationship with the college and provide a form of consistency for the College in responding to acts of misconduct. One or more of these is issued when a student has been found responsible for violating the Code.

- **Formal Warning** is a written notice to the student that he/she has violated college policy and that continued behavior may lead to more significant disciplinary action.
- **Disciplinary Notice** is a written notice to the student that rises above a warning and carries additional educational sanctions and/or notifications. A student on Disciplinary Notice should be aware that subsequent violations of the Student Code of Conduct may jeopardize the student's good standing with the College.
- **Disciplinary Probation** is a period of time (which maybe indefinite) during which a student is under warning that any violation of college policy may result in suspension. Disciplinary probation may also prohibit a student from participating in certain college activities or programs, as it is considered notice that the student is not in good standing due to their behavior. This sanction is not reflected on the academic transcript.
- **Disciplinary Suspension:** is a defined period of time during which a student is not permitted to engage in any of the privileges, courses, organizations, events, or activities associated with being a student at Elizabethtown College. During the period of suspension, a Dean of Students hold designating such will be placed on the student's account and transcript prohibiting registration, enrollment, attendance, or ability to earn credit for any credit or noncredit courses offered by Elizabethtown College. This also prohibits receipt of a degree or certificate from Elizabethtown College during this time. This suspension may not prevent a student from attending another college or university. Once the period of suspension has been completed, the hold will be lifted from the student account, provided the student has completed any other requirements required prior to return. During the period of suspension, the student is also banned from College property unless otherwise stated. The suspended student will receive a "WF" in all current courses; the "WF" notation will appear on the student's permanent transcript. Disciplinary Suspension will be noted on the student's transcript through the length of the suspension period. In some cases, in order to allow the student to complete the current semester, disciplinary suspension may be deferred to begin the following semester. Special conditions may apply during a deferred suspension. The College will not accept transfer credits earned at another institution during a period of disciplinary suspension. At the conclusion of the suspension period, the student must petition the Vice President for Student Life and Dean of Students in writing for permission to return to the College. The Vice President for Student Life and Dean of Students may require a personal meeting to determine eligibility; return following a disciplinary suspension is not automatic as special conditions or considerations imposed by the Student Conduct Administrator may apply. Approval for re-entry must be secured three weeks prior to the start of the new semester. Students who receive a sanction of disciplinary suspension will permanently forfeit their merit scholarship (if applicable). The merit scholarship will not be reinstated, even if the student is eligible to return after the suspension period has

ended. The record of disciplinary suspension is maintained in the student's confidential file for seven (7) years. Parents/guardians, coaches, academic advisors, some academic programs and co-curricular program advisors may be notified of the student's status. Disciplinary Suspension length of time will be sanctioned in one of the following ways:

- **Disciplinary Suspension for One Semester** – Unless a deferral has been issued, the length of suspension will be for one semester in addition to the remainder of the semester in which the sanction is implemented. A Semester is defined as the traditional fall or traditional spring term. Unless a deferral has been issued, a student under suspension is unable to enroll in courses between the date the suspension is issued and the end of the next traditional fall or spring term.
- **Disciplinary Suspension for Two Semesters** – Unless a deferral has been issued, the length of suspension will be for two semesters in addition to the remainder of the semester in which the sanction is implemented. A Semester is defined as the traditional fall or traditional spring term. Unless a deferral has been issued, a student under suspension is unable to enroll in courses between the date the suspension is issued and the end of two traditional semesters.
- **Disciplinary Suspension for Three Semesters** – Unless a deferral has been issued, the length of suspension will be for three semesters in addition to the remainder of the semester in which the sanction is implemented. A Semester is defined as the traditional fall or traditional spring term. Unless a deferral has been issued, a student under suspension is unable to enroll in courses between the date the suspension is issued and the end of three traditional semesters.
- **Disciplinary Suspension for Four Semesters** – Unless a deferral has been issued, the length of suspension will be for four semesters in addition to the remainder of the semester in which the sanction is implemented. A Semester is defined as the traditional fall or traditional spring term. Unless a deferral has been issued, a student under suspension is unable to enroll in courses between the date the suspension is issued and the end of four traditional semesters.
- **Disciplinary Suspension for Five Semesters** – Unless a deferral has been issued, the length of suspension will be for five semesters in addition to the remainder of the semester in which the sanction is implemented. A Semester is defined as the traditional fall or traditional spring term. Unless a deferral has been issued, a student under suspension is unable to enroll in courses between the date the suspension is issued and the end of five traditional semesters.
- **Disciplinary Suspension for Six Semesters** – Unless a deferral has been issued, the length of suspension will be for six semesters in addition to the remainder of the semester in which the sanction is implemented. A Semester is defined as the traditional fall or traditional spring term. Unless a deferral has been issued, a student under suspension is unable to enroll in courses between the date the suspension is issued and the end of two traditional semesters.
- **Disciplinary Suspension for Longer Than Six Semesters** – A Disciplinary Suspension for Longer than six semesters should be a special circumstance, and will be indicated by specific dates.
- **Disciplinary Expulsion** is a written notice to the student that the student is permanently separated from the College for disciplinary reasons. An individual who has been expelled from the College is not permitted on campus for any reason without permission of the Vice President for Student Life and Dean of Students. Disciplinary Expulsion is recorded on the student's permanent transcript; the expelled student will receive a "WF" in all current courses as noted on the student's permanent transcript. Documents supporting the student conduct decision are maintained in the student's confidential file indefinitely. Parents/guardians, coaches, academic advisors, some academic programs and co-curricular program advisors may be notified of the student's status.

## Educational Sanctions:

Educational sanctions may be imposed that are designed to maximize the learning of a specific student. These sanctions take into account the student's learning style and stage of development, as well as unique factors of a give situation. This list is not exhaustive.



- **Advisor Notification/Conference** is notice to the student's academic advisor, international student advisor or other program advisor. The advisor will be notified that the student has been found responsible for a violation of the Student Code of Conduct, and the student may be required to meet with the advisor.
- **Alcohol/Drug Assessment** requires student to complete an alcohol or other drug (AOD) assessment with a college staff counselor. The cost of an on-campus AOD assessment is \$100 and requires two sessions. The student is responsible for the cost of the assessment and must provide evidence of successful completion.
- **Athletic Director Notification/Conference** is notice to the Department of Athletics. The Athletic Director will be notified that the student athlete has been found responsible for a violation of the Student Code of Conduct and the student athlete may be required to meet with the Athletic Director.
- **BASICS – (Brief Alcohol Screening & Intervention of College Students)** –Student will meet with a staff counselor to examine alcohol or other drug use in a judgment-free two-session process. Fee is \$80.
- **College Employer Notification/Conference** informs the student's college employment supervisor that the student is responsible for a violation of the Student Code of Conduct; the student may be required to meet with the supervisor.
- **Community Service** requires the student to complete a service project in the College community, surrounding community, or student's home community.
- **Educational Project** requires the student to review an article or video, write a paper, complete a project, etc. at the discretion of the Student Conduct Administrator.
- **Education** requires the student to participate in an educational session facilitated by a professional. Student is responsible for the cost of the educational program and must provide evidence of successful completion.
- **Fees or Fines** may be imposed in conjunction with any sanction at the discretion of the Student Conduct Administrator.
- **Group Deactivation** includes removal of College recognition and funding for a specified period of time.
- **Letter of Apology** requires student to explain decisions and to apologize for misconduct to members of the community.
- **Loss of Privileges** restricts participation in particular activities/programs or campus events. Denial of privileges may include, but is not limited to, ability to represent the College in any way, use of facilities, participation in co-curricular activities, holding a leadership position, housing lottery privileges and housing privileges including break housing. Loss of privileges may also apply to groups, athletic teams, clubs and organizations.
- **No Communication/No Contact** restricts the student from any contact, whether in person, electronic, or via third parties, with one or more students.
- **Other** appropriate sanctions that do not fall within the scope of the items listed in this section.
- **Parent /Guardian Notification** alerts student found responsible for a Student Code of Conduct violation that parent/guardian will be notified.
- **Residential Expulsion** results in student being permanently removed from college housing at the student's expense.
- **Residential Relocation** results in a student being administratively moved to a different on-campus residence.
- **Residential Restriction** results in restricted access to certain college housing buildings.
- **Residential Suspension** requires the student to terminate occupancy of on-campus residence for a specified period of time. Restricted access to residence halls during the period of suspension may also be involved. The Vice President for Student Life or the Director of Residence Life may require a personal meeting to determine eligibility; return following a residential suspension is not automatic. Approval for re-entry into residential housing must be secured three weeks prior to the start of the new semester.
- **Restitution** requires student to make compensation for loss or damage to college property. This may take the form of appropriate service and/or monetary or material replacement.
- **Student Life Conference** requires the student to meet with the Vice President for Student Life and Dean of Students or other student life administrator.
- **Student Conduct Hold** blocks the student from registering for classes until expectations from the Office of Student Rights and Responsibilities are satisfied.

## **Employees**

- Termination of employment
- Revocation or denial of tenure
- Suspension
- Demotion
- Progressive discipline
- Warning
- Loss of pay or other pay adjustments
- Job transfer
- Change or restrictions in work location and/or job responsibilities
- Sexual Harassment/Misconduct education
- Restrictions on the Employee's communications
- Limitations on the Employee's movement in or on campus, programs, and activities

## **Factors in Determining Sanctions**

In considering the appropriate sanction within the recommended outcomes, the Hearing Board may consider the following factors:

- Respondent's prior discipline history;
- how the College has sanctioned similar incidents in the past;
- the nature of the conduct at issue, including whether there was violence;
- the impact of the conduct on the Complainant;
- the impact of the conduct on the College's community, its members or property;
- whether the Respondent accepted responsibility;
- whether the Respondent is reasonably likely to engage in the conduct in the future;
- any other mitigating or aggravating circumstances, including the College's values and
- the College's obligation to eliminate Sexual Misconduct prevent its recurrence, remedy its effects, and to maintain an environment free from Sexual Misconduct.

Respondent's lack of comprehension that conduct constituting Sexual Misconduct violates the bodily or emotional autonomy and dignity of a victim does not excuse the misconduct, though genuine lack of understanding may, in the Hearing Board's discretion, factor into the sanction decision.

## **Remedial Action**

The Hearing Board may consider other remedial actions that may be taken to address and resolve any incident of Sexual Misconduct and to prevent its recurrence, including: strategies to protect the Complainant and any Witnesses from retaliation; provide counseling for the Complainant; other steps to address any impact on the Complainant, any Witnesses, and the broader campus community, and any other necessary steps reasonably calculated to prevent future occurrences of harassment.

## **Failure to Comply with Sanctions**

Failure to comply with the sanctions or conditions imposed by the Hearing Board will result in action under Elizabethtown College's student Code of Conduct, Faculty Handbook or Employee Handbook.

## **Effective Date of the Written Determination**

The Written Determination becomes final only after the time period to file an Appeal has expired or after the Appeal decision has been sent to the Parties. The Written Determination will identify to whom any Appeal must be addressed.

## **Possible Notice to Parents**

The College reserves the right to notify parents of dependent students when student conduct has resulted in serious disciplinary sanctions. The College will observe all FERPA Laws and other applicable privacy laws when releasing information to parents. Thus, personally identifiable information and incident details may not be shared.

## **Appeal**

### **Filing an Appeal**

The Parties have equal rights to file an Appeal. Appeals will be submitted to the Title IX Coordinator in writing electronically. Appeals must be submitted within five (5) Business Days of the issuance of the Notice of Dismissal or Written Determination that the Party seeks to appeal.

### **Grounds for Appeal**

An Appeal is not intended to be a rehearing of the information presented at the Live Hearing. An Appeal may only be based upon one or more of the following grounds:

1. Procedural Irregularity that affected the outcome of the matter;
1. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
1. Conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and/or,
1. The sanction imposed is substantially disproportionate to policy violation.

### **Actions upon Receipt of Appeal**

1. The Title Coordinator shall designate a Decision-maker (the "Appeal Decision-maker") to consider and decide any Appeal, chosen from the pool of Title IX Administrators.
2. Within five (5) Business Days of the receipt of the Appeal by the Title IX Coordinator, the Title IX Coordinator will give notice to the Parties of the appeal and of the identity of the Appeal Decision-maker.
3. The Parties will have two (2) Business Days after notice of receipt of the Appeal to request that the Title IX Coordinator remove the Appeal Decision-maker based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial. The Title IX Coordinator will determine whether to

remove the Appeal Decision-maker. If the Appeal Decision-maker is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If the Appeal Decision-maker is removed and replaced, the Parties will be sent simultaneous written notification of the name of the new Appeal Decision-maker.

4. When the time to request removal of the Appeal Decision-maker has run, the Appeal Decision-maker will be provided with the entire file provided to the Hearing Board, together with the Written Determination.

5. The Appeal Decision-maker will first determine whether the Appeal will be accepted, based upon whether one or more of the Appeal Grounds set forth above has been properly alleged by the Appellant. Within five (5) Business Days of the receipt of the Appeal, the Appeal Decision-maker will send written notice to the Parties simultaneously that either (a) the Appeal has been rejected due to insufficient grounds, with the Appeal Decision-maker's rationale, or (b) the Appeal has been accepted.

6. The non-appealing Party/ies will be entitled to submit a response to the Appeal, which must be sent to the Title IX Coordinator within five (5) Business Days of receipt that the Appeal was accepted.

7. The Appeal Decision-maker will then analyze all of the materials related to the Appeal and will take one of the following actions:

a. Uphold the original decision

b. Send the matter back to the Hearing Board for further consideration

c. Refer the matter to the Title IX Coordinator for further investigation or a new hearing with a new Hearing Board

8. The Appeal Decision-maker will issue their written decision on Appeal within ten (10) Business Days after the receipt of the non-appealing Party/ies response. If no response is submitted by the non-appealing Party/ies, then the written decision shall be issued within ten (10) Business Days after the date the response was due to be submitted.

9. The written Appeal decision, which will include the Appeal Decision-maker's rationale, will be sent to the Parties simultaneously.

### **Appeal Decisions are Final**

A decision denying the entitlement to an Appeal and all decisions made by the Appeal Decision-maker are final.

### **When an Appeal is not Filed**

The Parties will be notified if the time to file an Appeal has expired without any Appeal having been submitted.

## **Formal Complaint Process Timeframes**

Measured from the conclusion of the investigation, Elizabethtown College strives to meet the following timeframes for the Formal Complaint Process. All days are measured in Business Days.

- A Notice of Charge or Notice of Dismissal: The Notice of Charge or Notice of Dismissal will be sent to the Parties simultaneously within ten (10) Business Days of the conclusion of the investigation.
- Notice of Live Hearing: As applicable, a Notice of Live Hearing will be sent the Parties simultaneously within ten (10) Business Days of the delivery of the Notice of Charge.
- Challenge to Hearing Board Member: Within two (2) Business Days of receipt of the Notice of Live Hearing, Parties have the right to make a written request that the Title IX Coordinator remove a member of the Hearing Board based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.

- **Live Hearing:** The Live Hearing will begin no sooner than ten (10) Business Days after the Notice of Charge is issued, no sooner than five (5) Business Days after the Notice of Live Hearing, and no later than twenty (20) Business Days after the Notice of Live Hearing is issued.
- **Written Determination following a Live Hearing:** Following a Live Hearing, the Written Determination will be sent to the Parties simultaneously within fifteen (15) Business Days of the conclusion of the Live Hearing.

**Appeals:**

- Parties must file an Appeal within five (5) Business Days of receipt of the Written Determination.
- Within five (5) Business Days of the receipt of the Appeal by the Title IX Coordinator, the Appellant and non-appealing Party/ies will receive written notice that an Appeal has been submitted and the identity of the Appeal Decision-maker.
- The Parties will have two (2) Business Days after notice of receipt of the Appeal to request that the Title IX Coordinator remove a member of the Appeal Decision-maker based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.
- Within five (5) Business Days of the receipt of the Appeal, the Appeal Decision-maker will send written notice to the Parties either accepting or rejecting the Appeal.
- The Appeal Decision-maker will issue its written decision on Appeal within ten (10) Business Days after the receipt of the non-appealing Party/ies response to the Appeal.

## Option for Voluntary Informal Resolution

Elizabethtown College offers a voluntary process for Formal Complaints to be addressed through Informal Resolution. During the Informal Resolution process, a Facilitator will attempt to help the Parties come to an agreement about how to resolve a Formal Complaint. The Informal Resolution process is available to the Parties only after a Formal Complaint is filed and before a Determination of Responsibility or No Responsibility is issued. The Informal Resolution process is never available where a Formal Complaint alleges that a College Employee engaged in Title IX Sexual Harassment toward a student.

All Parties' participation in the Informal Resolution process must be voluntary. In order to initiate the Informal Resolution process, each Party must sign the "Consent to Informal Resolution Process" form and submit it to the Title IX Coordinator. When all Parties to a Formal Complaint have submitted the consent forms, the College will pause the Formal Complaint Process, including any ongoing investigation or hearing, for a period of fifteen (15) Business Days (unless a shorter or longer time is set by the Title IX Coordinator), to allow the Parties to proceed with the Informal Resolution Process. The time period during which the Formal Complaint Process is paused for the Informal Resolution Process shall not count toward the time periods set forth to conclude the Formal Complaint Process.

### Notice Prior to Informal Resolution

Prior to the beginning the Informal Resolution process, the Title IX Coordinator will provide notice of the allegations of the Formal Complaint and will direct the Parties' attention to the Informal Resolution provisions of this Policy.

### Role of the Facilitator

The Facilitator will decide the process and procedures to be used in the Informal Resolution process but shall not take actions inconsistent with this Policy. The Facilitator will treat the Parties fairly and equitably. Each Party may be accompanied by their Advisor during any portion of the Informal Resolution process. The Facilitator may meet with the Parties separately, may share information obtained during the course of any investigation with the Parties, may make suggestions about the terms of an Informal Resolution, and may take other reasonable steps to assist the Parties in determining if they can reach an Informal Resolution. The Facilitator shall not require the Parties to meet together, in-person, unless the Parties agree to do so.

If the Parties reach an agreement to resolve a Formal Complaint informally, the Facilitator shall create a written agreement that lists the terms of the Informal Resolution for the Parties to sign. A Party may withdraw from the

Informal Resolution process at any time before they sign a written document agreeing to an Informal Resolution and within 48 hours after the Party signs the written agreement. If a Party timely withdraws from the information resolution process, then the College shall resume the Formal Complaint Process.

Under no circumstances may the Facilitator be called as a Witness in the Formal Complaint Process.

#### **Approval of Informal Resolution by Title IX Coordinator**

If no Party withdraws from the written agreement within 48 hours, the agreement shall be presented to the Title IX Coordinator for final approval and implementation. The Title IX Coordinator shall give deference to the Parties' agreement but shall not approve an agreement that the Title IX Coordinator determines to be impractical, unduly burdensome, or inconsistent with the College's obligations under this Policy, Title IX, or another applicable law or policy. If the Title IX Coordinator disapproves the Parties' written agreement, the Facilitator and the Parties may agree to modify and resubmit the agreement. If they do not agree to do so and/or do not submit a modified written agreement, then the Title IX Coordinator shall resume the Formal Complaint Process.

Neither the College nor any other person may retaliate against an individual who has participated or refused to participate in any matter addressed under this Policy. Retaliation includes any action to intimidate, threaten, coerce, or discriminate against an individual (a) for the propose of interfering with any right or privilege secured by Title IX or its implementing regulations; or (b) because the individual has made a Report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding, or hearing under this Policy. Retaliation is also prohibited against individuals involved in matters that do not arise under this policy but arise out of the same facts or circumstances as a Report or Formal Complaint of sex discrimination or sexual harassment. Retaliation is a violation of College Policy. Any allegations of retaliation related to a Report or Formal Complaint Process will be referred to the appropriate process of resolution, even if such process runs concurrent with a Formal Complaint Process outlined in this Policy. The outcome of any proceedings called to resolve retaliation in relationship to a Report or Formal Complaint Process must be reported back to the Title IX Coordinator.

## **Training and Prevention Programming**

In an effort to reduce the risk of gender-based discrimination and sexual misconduct occurring among its students, Elizabethtown College utilizes a range of campaigns, strategies and initiatives to provide awareness, educational, risk reduction and prevention programming.

It is the policy of the College to offer educational programming to prevent domestic violence, dating violence, sexual assault (including stranger and known offender assaults) and stalking each year. Educational programs are offered to raise awareness for all incoming students and employees and are often conducted during new student and new employee orientation and throughout an incoming student's first semester. These programs and others offered throughout the year include messages regarding awareness, primary prevention (including normative messaging, environmental management and bystander intervention), and discuss College Sexual Misconduct policies. Bystander engagement is encouraged through safe and positive intervention techniques and by empowering third-party intervention and prevention such as calling for help, using intervention-based apps, identifying allies and/or creating distractions.

Programs also offer information on risk reduction that strives to empower victims, how to recognize warning signals and how to avoid potential attacks, doing so without victim-blaming approaches. Throughout the year, ongoing awareness and prevention campaigns are directed to students, faculty and staff, often taking the form of campaigns, guest speakers, events, and programs sponsored by student clubs and organizations. The College requires all first\_ year students to complete Sexual Assault Prevention for First Year Students, and Sexual Assault Prevention: Ongoing, for returning students. Both are online educational platforms offered by Vector Solutions. The College also

provides mandatory training in addition to Vector Solutions for student athletes focusing on bystander intervention and environmental and cultural factors that relate specifically to student athletes.

## Written Notification of Available Resources

The College will provide a Written Notification of Resources to students and employees, which includes information about support and assistance granted to victims of sexual assault, stalking, dating violence or domestic violence. The support and assistance the College can provide includes accessing advocacy resources; academic support; counseling, disability, health or mental health services; legal assistance; visa/immigration assistance (both within the College and in the community); transportation and will provide other security and support measures as appropriate, including by issuing a no-contact order, arranging a change of living or work assignment or class schedules (including for the Respondent pending the outcome of an investigation), or making adjustments for assignments or tests, etc. and assisting with reporting crimes to local law enforcement if the victim chooses. This information is also available on the Elizabethtown College Title IX webpage.

## Recordkeeping

Elizabethtown College will maintain the records identified in this section of this Policy for a period of seven (7) years. The records maintained shall be kept confidential and not disclosed, except as permitted or required by law. The records may be maintained in paper or digital files.

In connection with each Report and each Formal Complaint, the College will maintain the following records, to the extent they exist:

- documentation of any Report of alleged Title IX Sexual Harassment;
- documentation of any Supportive Measures or if no Supportive Measures are provided, the reasons why and an explanation of how the College's response was not clearly unreasonable;
- the Formal Complaint;
- documentary evidence gathered in the course of an investigation and photographs or descriptions of nondocumentary evidence gathered in the course of an investigation;
- written responses of the parties provided prior the finalization of the investigation report;
- the Investigation Report;
- the audio recording, audiovisual recording, or transcript of any Live Hearing;
- the Written Determination;
- any Appeal and Written Appeal Decision;
- records of the sanctions and/or remedies;
- records of any other steps taken to restore or preserve equal access to the College's Education Program or Activity,
- any written agreement of an informal resolution; and
- a statement documenting the basis for the College's conclusion that its response to a report or formal complaint was not deliberately indifferent.

The College shall also maintain all materials used to train its Title IX Coordinators, Investigators, Decision-makers, and Facilitators and a copy of each version of its Title IX Policy on Sex Discrimination.

## Modifications to this Policy

This Policy may be modified from time-to-time, during an academic year or otherwise, in the College's discretion and as may be required by law. College Employees and Students will be notified whenever this Policy is modified. The policy and procedures posted on the website are the most current.

## Disclosure of Results of Disciplinary Proceedings to Next of Kin

Upon request, the College will disclose the results of any disciplinary proceeding conducted by the institution against a student who is the alleged perpetrator of any crime of violence or non-forcible sex offense (incest or statutory rape) to the alleged victim's next of kin if the victim is deceased as a result of the offense.

## Federal Timely Warning Reporting Obligations

Victims of sexual assault, dating or domestic violence or stalking should be aware that the College must issue timely warnings for reported incidents that represent a serious or continuing threat to members of the campus community. In such circumstances, no personally identifiable information of the Complainant will be disclosed.

## Definitions

**Advisor:** A person selected by a Complainant or Respondent to support Complainant or Respondent or a person appointed by the College to ask Cross-examination Questions, if the Party has not selected another Advisor for the Live Hearing.

**Administrative Leave:** Temporary separation from a person's job, with or without pay and benefits intact, as determined by the College and any relevant obligations binding the College.

**Appeal:** An objective review of the prior process and outcome unless new evidence must be considered.

**Appeal Decision-maker:** An individual that decides an Appeal. An Appeal Decision-maker cannot be the Investigator, the Title IX Coordinator, or members of the Hearing Board.

**Appellant:** A person who file an Appeal.



**Business Days:** Any day, excluding Saturday, Sunday, federal and state holidays, or days when the institution is closed.

**Campus Official:** An Employee of the College who has authority to institute corrective measures on behalf of the College.

**Complainant:** An Individual who is alleged to have been the target of conduct that could constitute Sexual Misconduct under this Policy, whether or not the individual has filed a Formal Complaint.

**Consent:** Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act.
- Consent may be initially given but withdrawn at any time.
- Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide Consent due to intellectual or other disability or other condition. When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs impact each individual differently. Determining whether an individual is incapacitated requires an individualized determination. When determining whether a person has the capacity to provide Consent, the College will consider whether a sober, reasonable person in the same position knew or should have known that the other party could or could not consent to the sexual activity. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When Consent is withdrawn or can no longer be given, Consent is not present and sexual activity must stop.

**Credibility:** The worthiness of belief of information shared by a Party or a Witness.

**Cross-examination Questions:** Relevant questions and follow-up questions, including questions challenging Credibility. Cross-examination Questions are intended to give the Parties equal opportunity to meaningfully challenge the plausibility, reliability, Credibility, and consistency of the information provided by the other Party and Witnesses so that the outcome of each individual case is more likely to be factually accurate.

**Dating Violence:** (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act) includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of

interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.

Dating Violence is categorized as **Regulatory** when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Dating Violence will be categorized as **Non-Regulatory**.

**Decision-maker:** A person or persons designated to conduct Live Hearings, to decide whether or not a violation of this Policy has or has not occurred, to determine disciplinary sanctions and Remedies when a violation has occurred, and/or to decide Appeals. Decision-makers may or may not be Employees of the College. Decision-makers are trained on the definition of Title IX Sexual Harassment, the scope of the College's program or activity, the Formal Complaint Process, Relevance, the technology to be used at a hearing, how to conduct hearings and Appeals, and how to serve impartially.

**Determination of Responsibility or No Responsibility:** A determination by the Hearing Board regarding whether the conduct of Respondent found to have occurred (the Findings of Fact) violates this Policy.

**Domestic Violence:** (as defined in the VAWA amendments to the Clery Act), includes any violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the state, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Pennsylvania.

Domestic Violence is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Domestic Violence will be categorized as Non-Regulatory.

**Education Program or Activity:** Locations, events, or circumstances over which Elizabethtown College exercises substantial control over the Respondent and the context in which the conduct allegedly constituting Title IX Sexual Harassment occurred. Education program or Activity includes any building owned or controlled by the College, and/or by a student organization that is officially recognized by the College.

**Employee:** Faculty, staff, administrator, and any other individual employed by the College in any capacity or role, except not including a person who is also enrolled as a full-time student of the College.

**Exculpatory Evidence:** Evidence, such as a Statement, tending to excuse, justify, or absolve the alleged fault or responsibility of a Respondent.

**Facilitator:** A person or persons designated to facilitate an Informal Resolution of a Formal Complaint. Facilitators may or may not be Employees of the College. Facilitators are trained on the definition of Title IX Sexual Harassment,

the scope of the College's program or activity, how to conduct an Informal Resolution process, and how to serve impartially.

**Formal Complaint:** A document signed by a Complainant or a Title IX Coordinator alleging Sexual Misconduct against a Respondent and requesting that the allegation(s) be investigated.

**Formal Complaint Process:** The process for investigating and resolving a Formal Complaint of regulatory prohibited conduct.

**Findings of Fact:** A Hearing Board's decision regarding what occurred.

**Hearing Board:** A single Decision-maker or group of Decision-makers who conduct the Live Hearing. A member of the Hearing Board cannot be the same person(s) as the Title IX Coordinator or the Investigator. May also be referred to as the Hearing Panel.

**Inculpatory Evidence:** Evidence that shows or suggests that a Respondent engaged in the alleged Title IX Sexual Harassment.

**Informal Resolution:** A voluntary process that allows the Parties to engage in discussions in an attempt to come to an agreement, subject to approval by the Title IX Coordinator to resolve a Formal Complaint that does not involve a full investigation, hearing, and/or determination. May be used to resolve Formal Complaints of regulatory prohibited conduct and non-regulatory prohibited conduct.

**Investigator:** A person or persons, internal or external to the College, designated by the Title IX Coordinator to investigate the allegations of a Formal Complaint. An Investigator may also be the Title IX Coordinator but may not be a member of the Hearing Board or the Appeal Decision-maker. Investigators are trained on the definitions contained within this policy, the scope of the College's program or activity, the Formal Complaint Process, Relevance, how to conduct an investigation, how to create an investigation report, and how to serve impartially.

**Live Hearing:** A hearing where all Parties can see and hear each other in real time, whether in the same location or connected via technology.

**Notice of Charge:** A notice sent to the Parties detailing the allegations potentially constituting Sexual Misconduct (the charges) and indicating that charges and information gathered during an investigation will proceed to the Formal Complaint Process for evaluation.

**Notice of Dismissal:** written notice of the Title IX Coordinator's decision to dismiss a Formal Complaint, including the basis of the decision.

**Notice of Investigation:** A written notice to the Parties commencing the Formal Complaint Process.

**Notice of Live Hearing:** The letter sent to the Parties providing notice that allegations falling within the scope of this Policy will proceed to a Live Hearing.

**Party or Parties:** Individuals who are Complainants and Respondents in a Formal Complaint Process. When referencing the Complainant, the Respondent may be referred to as the "other Party" and when referencing the Respondent, the Complainant may be referred to as the "other Party."

**Procedural History:** A section of the Written Determination describing the procedural steps taken from the receipt of the Formal Complaint through the determination, including notifications to the Parties; the date Respondent received notice of the allegation; the investigation process; and hearings held.

- Regarding the description of the investigation process, the Procedural History section should include: which Parties and Witnesses were interviewed and when; site visits; methods used to gather evidence; what type of evidence was reviewed; and the process undertaken to inspect and review the evidence and to disseminate the investigation report, including timelines. The Written Determination should include any actual or perceived procedural issues. For example, if a process was delayed for good cause, that delay should be explained in the Written Determination. Likewise, if the Parties requested that the Investigator follow certain "leads" that the Investigator was not reasonably able to pursue based on a lack of time, resources, or the unavailability of Witnesses, that should be addressed in the timeline.

**Procedural Irregularity:** A failure to follow the College's own procedures.

**Rape Shield Protections:** Rules that protect Complainants from questions about or submission of evidence regarding the Complainant's sexual predisposition or prior sexual behavior except in very limited circumstances.

**Regulatory Prohibited Conduct:** For purposes of this Policy, the term includes the defined violations of Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking.

**Regulatory Quid Pro Quo Sexual Harassment:** An Employee conditioning the provision of aid, benefit or service of the Institution on an individual's participation in unwelcome sexual conduct.

**Non-Regulatory Quid Pro Quo Sexual Harassment:** An Official, Volunteer or Student conditioning the provision of aid, benefit or service of the Institution on the individual's participation in unwelcome sexual conduct.

**Regulatory Hostile Environment Sexual Harassment:** Unwelcome conduct, on the basis of sex, that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Institution's Education Program or Activity.

**Non-Regulatory Hostile Environment Sexual Harassment:** Unwelcome conduct, on the basis of sex, that a reasonable person would determine is sufficiently severe, pervasive, and objectively offensive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from any educational, employment, social or residential program in offered connection with the Institution.

**Relevance:** Information that is relevant is probative of a material fact concerning the allegations. Information that is not relevant includes information protected by a legally recognized privilege; evidence about a Complainant's prior sexual predisposition or prior sexual behavior unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or offered to prove Consent, where Consent is at issue (and it concerns specific instances of sexual behavior with Respondent); any Party's medical, psychological, and similar records unless the Party has given voluntary, written consent; Party or Witness Statements that have not been subjected to Cross-examination at a Live Hearing; and evidence duplicative of other evidence.

**Remedies:** Measures taken by the College following a Determination of Responsibility on the part of Respondent designed to restore or preserve equal access to the College's Education Program or Activity. Remedies may be disciplinary or punitive and may burden the Respondent.

**Report:** The submission (disclosure) of information to the Title IX Coordinator or a Responsible Administrator regarding a potential violation of this Policy. A Report is not a Formal Complaint and, therefore, will not be investigated and does not trigger the Formal Complaint Process.

**Respondent:** Any individual who has been alleged to have engaged in conduct that could violate this Policy.

**Sexual Assault** – (As defined in the Clery Act) includes any sexual act directed against another person, without the Consent of the Complainant, including instances where the Complainant is incapable of giving Consent. Sexual Assault may be one of the following categories:

- A. **Sexual Penetration Without Consent** - Any penetration of the mouth, sex organs, or anus of another person, however slight by an object or any part of the body, when Consent is not present. This includes performing oral sex on another person when Consent is not present.
  
- A. **Sexual Contact Without Consent** - Knowingly touching or fondling a person's genitals, breasts, buttocks, or anus, or knowingly touching a person with one's own genitals or breasts, when Consent is not present. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes causing or inducing a person, when Consent is not present, to similarly touch or fondle oneself or someone else.

- A. **Statutory Sexual Assault** – The age of consent for sexual activity in Pennsylvania is 16. Minors under the age of 13 cannot consent to sexual activity. Minors aged 13-15 years old cannot consent to sexual activity with anyone who is 4 or more years older than they are at the time of the activity. Minors aged 16 years of age or older can legally consent to sexual activity, as long as the other person does not have authority over them as defined in Pennsylvania's institutional sexual assault statute<sup>[3]</sup>.

Sexual Assault is categorized as **Regulatory** when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Sexual Assault will be categorized as **Non-Regulatory**.

**Sexual Exploitation – (Sexual Exploitation is non-regulatory prohibited conduct)** Engaging in sexual behaviors directed toward or involving another person or use of another person's sexuality for purposes of sexual gratification, financial gain, personal gain or personal advantage when Consent is not present. This includes, but is not limited to, the following actions, including when they are done via electronic means, methods or devices:

- A. Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's Consent;
- B. Indecent exposure or inducing others to expose private or intimate parts of the body when Consent is not present;
- C. Recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person's Consent;
- D. Prostituting another individual; or
- E. Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
- F. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

**Stalking:** (as defined in the VAWA amendments to the Clery Act) means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- A. fear for their safety or the safety of others; or
- B. suffer substantial emotional distress.

A course of conduct is when a person engages in two or more acts that include, but are not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person in a prohibited way, or interferes with a person's property.

Stalking includes the concept of cyberstalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, email or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Stalking is categorized as **Regulatory** when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Stalking will be categorized as **Non-Regulatory**.

**Standard of Evidence:** The Standard of Evidence reflects the degree of confidence that a Decision-maker has in the correctness of the factual conclusions reach. The College will apply the Preponderance of Evidence Standard of Evidence to matters within the scope of this Policy.

**Statement:** Evidence that constitutes a person's intent to make factual assertions.

**Supportive Measures:** Non-disciplinary and non-punitive services that are offered, without fee or charge, by the College on an individualized basis to a Complainant or Respondent that are designed to restore or preserve equal access to the College's Education Program or Activity without unreasonably burdening the other Party.

**Title IX Coordinator:** The person or persons designated by the College as a Title IX Coordinator, including any persons designated as an "acting," "deputy" or "interim" Title IX Coordinator. In the event that special circumstances require the Title IX Coordinator to designate another person to address their responsibilities, the term also includes the Title IX Coordinator's designee.

**Title IX Sexual Harassment:** Conduct, on the basis of sex, that occurs within the College's Education Program or Activity within the United States, and that involves:

1. an employee of the College conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
2. unwelcome conduct that is determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the College's Education Program or Activity;
3. Sexual Assault;
4. Dating Violence;
5. Domestic Violence; or,
6. Stalking.

**Witness:** A person who has seen, heard or otherwise has knowledge or information relevant to an alleged violation of this Policy, but not including the Investigator. The Investigator and Hearing Board meet with Witnesses at their request and at the suggestion of the Parties.

**Written Determination:** A letter delivered simultaneously to the Parties that describes the Hearing Board's decision  
Written Determination: A letter delivered simultaneously to the Parties that describes the Hearing Board's decision regarding responsibility, which must be supported by evidence.

[1] The full text of the Final Rule and its extensive Preamble is available here: <http://bit.ly/TitleIXReg>

[2] The text of Act 16 of 2019 is available here: <https://bit.ly/3f7DAr6>

[3] The text of Chapter 31 of the Pennsylvania Crimes Code is available here <https://bit.ly/305G9pu>

## **Revisions to the Student Handbook 2023-24**

### **Revisions to the 23-24Handbook:**

1.